

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
NORTHERN ILLINOIS GAS COMPANY,)
d/b/a NICOR GAS COMPANY)
)
) No. 04-0779
)
Proposed general increase in)
natural gas rates (Tariffs filed)
on November 4, 2004).)

Chicago, Illinois
May 23, 2005

Met pursuant to notice at 9:00 a.m.

BEFORE:

MR. IAN D. BRODSKY and THOMAS G. ARIDAS,
Administrative Law Judges.

APPEARANCES:

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20 Appearing for CUB;

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22 SULLIVAN REPORTING COMPANY, by
Tracy L. Overocker, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
Albert Harms		648			
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Hethie S. Parmasano					
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1	<u>E X H I B I T S</u>		
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3			
4	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
5	AG Cross		
6	No. 10	655	662
7	11	786	
8	13.0, 13.1,		
9	13.2 & 30.0		791
10	12&13		874
11	ELPC		
12	No. 7	648	652
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14	No. 3	647	
15	RGS Cross		
16	Nos. 6-8	646	646
17	IIEC Cross		
18	No. 4	681	688
19	DRI		
20	No. 3	733	
21	CCSAO/CUB		
22	No. 9	757	761
23	STAFF		
24	No. 23	763	764
25	No. 9.0&18.0		833
26	NICOR		
27	No. 46	783	783
28	No. 47	849	
29	ELPC		
30	No. 1&2		804
31	ICC		
32	No. 2.0&11.0		858
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1 JUDGE ARIDAS: Pursuant to the direction of the
2 Illinois Commerce Commission, I now call Docket
3 No. 04-0779; this matter being Northern Illinois Gas
4 Company's proposed general increase in natural gas
5 rates.

6 Let's start with the appearances for
7 the record, first here in Chicago and then if anybody
8 is on the phone.

9 MR. RIPPPIE: On behalf of Northern Illinois Gas
10 Company, Glenn, two n's, Rippie, R-i double p, as in
11 Peter, i-e and John Ratnaswamy, R-a-t-n-a-s-w-a-m-y,
12 each of the firm of Foley & Lardner, LLP, 321 North
13 Clark Street, Suite 2800, Chicago, Illinois 60610.

14 MR. MALONEY: Also appearing on behalf of
15 Northern Illinois Gas Company, Neil Maloney,
16 Assistant General Counsel for Northern Illinois Gas
17 Company, 1844 Ferry Road, Naperville, Illinois 60563.

18 MR. FEELEY: Representing Staff of the Illinois
19 Commerce Commission, John Feeley, John Reichart,
20 Carmen Fosco and Carla Scarsella, Office of General
21 Counsel, Illinois Commerce Commission, address is 160
22 North LaSalle Street, Suite C-800, Chicago, Illinois

1 60601.

2 MS. BUGEL: Appearing on behalf of
3 Environmental Law & Policy Center, Faith Bugel,
4 B-u-g-e-l, 35 East Wacker Drive, Chicago, Illinois
5 60601.

6 MR. GARG: Appearing on behalf of the People of
7 the State of Illinois, Rishi Garg and Mark Kaminski,
8 representing the Office of the Illinois Attorney
9 General Lisa Madigan, 100 West Randolph, Floor 11,
10 Chicago, Illinois 60601.

11 MR. TOWNSEND: On behalf of MidAmerican Energy
12 Company, Direct Energy Services, LLC, Interstate Gas
13 Supply of Illinois, Inc., U.S. Energy Savings
14 Corporation and WPS Energy Services, Inc.,
15 collectively as the Retail Gas Suppliers, the law
16 firm of DLA Piper Rudnick Gray Cary US, LLP, by
17 Christopher J. Townsend and William A. Borders, 203
18 North LaSalle, Chicago, Illinois 60601.

19 MR. KELTER: On behalf of the Citizens Utility
20 Board, Robert Kelter, 208 South LaSalle, Suite 1760,
21 Chicago 60604.

22 MR. MOORE: On behalf of Dominion Retail, Inc.,

1 and Business Energy Alliance and Resources, LLC,
2 Stephen Moore of the law firm Rowland & Moore, 200
3 West Superior Street, Suite 400, Chicago, Illinois
4 60610.

5 MR. FEIN: Appearing on behalf of Constellation
6 NewEnergy Gas Division, LLC, David I. Fein, 550 West
7 Washington Boulevard, Suite 300, Chicago, Illinois
8 60661.

9 MR. ROBERTSON: Appearing on behalf of the
10 Illinois Industrial Energy Consumers, Eric Robertson,
11 Lueders Robertson & Konzen, P.O. Box 735,
12 1939 Delmar, Granite City, Illinois 62040.

13 JUDGE ARIDAS: Any further appearances?

14 (No response.)

15 Hearing none, let's move on. Before
16 we start today, Mr. Rippie informed me that Nicor
17 filed an additional motion this morning -- or being
18 filed as we speak -- supplemental to their motion in
19 limine regarding Mr. Kelter's issue.

20 Mr. Rippie, you want to elaborate on
21 that further for the record?

22 MR. RIPPIE: Yes. I believe the motion will be

1 e-docketed by now and copies should be available
2 shortly. In essence, this is a renewed -- copies are
3 now available. In essence, this is a renewed motion
4 in limine based upon the supplemental answers filed
5 by CUB, CCSAO and by its consultant, Mr. Galligan.

6 It's not my intention to argue the
7 motion, obviously, this morning; but in essence, this
8 motion asserts that given that information, it is
9 impossible and impractical for Nicor Gas to
10 adequately respond in a live hearing and, therefore,
11 ask for one of two alternative forms of relief,
12 either a renewed motion in limine or in the
13 alternative, that this issue be severed and addressed
14 in a separate docket where more orderly proceedings
15 could occur.

16 JUDGE ARIDAS: Okay. Interestingly enough, we
17 were prepared to issue a ruling this morning on that
18 matter but seeing the development, we're going to
19 hold off on that so we can review your motion.

20 MR. RIPPIE: By the way, the cases cited
21 therein are also available.

22 JUDGE ARIDAS: Has Mr. Kelter seen a copy of

1 this?

2 MR. RIPPIE: Just now. I alerted him of this
3 first thing this morning; but, obviously, this is a
4 motion that was prepared over the weekend so he's not
5 seen it yet.

6 JUDGE ARIDAS: Go ahead, Mr. Kelter.

7 MR. KELTER: I guess my question would be --
8 procedurally, I'm a little confused about how this is
9 going to proceed.

10 JUDGE ARIDAS: Well, like I said, we were
11 prepared to issue a ruling, but I'd like to see what
12 was filed -- we'd like to see what was filed and we'd
13 like to give you a chance to respond to it any way
14 you like. If you want, you could do an on-the-record
15 response verbally sometime today or you can file
16 something in writing.

17 MR. KELTER: Well, I guess what I'd like is the
18 opportunity to read this over and see what's in there
19 and --

20 JUDGE ARIDAS: Sure.

21 MR. KELTER: -- go from there.

22 JUDGE BRODSKY: So why don't we take a few

1 minutes when we reconvene after the lunch break and
2 we can see where we're at with it.

3 MR. KELTER: Okay.

4 JUDGE BRODSKY: Other matters, there was some
5 outstanding late-filed exhibits and other types of
6 filings, I suppose, that were contemplated at the end
7 of last week's hearing. Do we have those? Are all
8 those taken care of at this point or are some left
9 outstanding?

10 MR. TOWNSEND: Your Honors, Christopher
11 Townsend on behalf of the Retail Gas Suppliers, we
12 did have some on-the-record data requests as you'll
13 recall during the cross-examination of Mr. Bartlett.
14 A couple of those were responded to on the record.
15 One of those referred us to a data response where the
16 Hub Services Agreement and the Operating Agreement
17 between Nicor Gas and EnerChange were found. We now
18 have copies of those documents and we would move for
19 the admission of what has been marked RGS Cross
20 Examination Exhibit 6, which is the Hub Services
21 Agreement; RGS Cross Exhibit 7, which is the
22 Operating Agreement dated as of October 25th, 2001,

1 among Nicor Inc., Northern Illinois Gas Company d/b/a
2 Nicor Gas Company and each of the entities identified
3 on Exhibit 8 hereto; and RGS Cross Exhibit 8, which
4 is the first amendment to the Operating Agreement.

5 JUDGE ARIDAS: Was there any objection to that
6 admission?

7 MR. RIPPIE: No, there is not.

8 JUDGE ARIDAS: So then RGS Exhibits 6 through 8
9 will be admitted.

10 (Whereupon, RGS Cross
11 Exhibit Nos. 6-8 were
12 marked for identification
13 as of this date.)

14 (Whereupon, RGS Cross
15 Exhibit Nos. 6-8 were
16 admitted into evidence as
17 of this date.)

18 MR. FEIN: Good morning, your Honors. At the
19 close of the hearing on Friday, I believe you already
20 granted admission of CNE Cross -- Exhibit No. 3.
21 There were some hand markings on the exhibits. I now
22 have clean copies that I can tender to the court

1 reporter.

2 JUDGE BRODSKY: Okay. Very good.

3 (Whereupon, CNE

4 Exhibit No. 3 was

5 marked for identification

6 as of this date.)

7 JUDGE BRODSKY: As I recall, those were
8 admitted upon the filing this morning. What was the
9 exhibit number on that?

10 MR. FEIN: Exhibit 3.

11 JUDGE BRODSKY: All right. Does that conclude
12 the various filings that were outstanding?

13 (No response.)

14 Hearing no others, were there any more
15 matters to be dealt with before we continue with the
16 next witness?

17 (No response.)

18 Okay. Nicor, then you may call your
19 next witness -- or, actually, I suppose re-call
20 Mr. Harms.

21 And with that, Mr. Harms, I remind you
22 you are still under oath.

1 THE WITNESS: Yes, sir.

2 MS. BUGEL: Your Honors, ELPC would request
3 going first in this sequence. We have just a couple
4 minutes of cross-examination.

5 JUDGE BRODSKY: That's fine. You may proceed.

6 CROSS-EXAMINATION

7 BY

8 MS. BUGEL:

9 Q Mr. Harms, I have with me what I've marked
10 as ELPC Exhibit 7, which is ELPC Data Request 2.02
11 and Nicor's response.

12 MS. BUGEL: Permission to approach the witness.

13 JUDGE ARIDAS: You may.

14 (Whereupon, ELPC
15 Exhibit No. 7 was
16 marked for identification
17 as of this date.)

18 BY MS. BUGEL:

19 Q Mr. Harms, are you familiar with this
20 document marked as ELPC Exhibit 7?

21 A Yes, I am.

22 Q Mr. Harms, this document discusses the

1 average cost per therm of gas supply; is that
2 correct?

3 A Yes, it does.

4 Q Was this response -- was this response to
5 this request prepared by you or under your direction?

6 A It was.

7 Q Is it true and accurate to the best of your
8 knowledge?

9 A Yes, it is.

10 MS. BUGEL: Your Honor, at this time I offer
11 into evidence ELPC Exhibit 7.

12 MR. RATNASWAMY: Your Honors, without -- could
13 I renew -- without detailing the objection I made
14 last week and ask there be a continuing objection to
15 this line of cross? Your Honors overruled that
16 objection, we just want to make it again for the
17 record.

18 JUDGE BRODSKY: Okay. So you're relating this
19 to the remainder of the ELPC issue presented by
20 Dr. Kushler and other related witnesses?

21 MR. RATNASWAMY: Yes. The objection -- the
22 short version is relevance but I don't think anyone

1 would find it interesting to hear us reargue it and
2 have it denied again.

3 JUDGE BRODSKY: Okay. Well, the objection is
4 noted for the record and is overruled.

5 So with that, I suppose --

6 MR. ROBERTSON: Your Honor?

7 JUDGE BRODSKY: Mr. Robertson, go ahead.

8 MR. ROBERTSON: I'd like to renew my objection
9 as well and make the same approach. I don't need to
10 argue it again.

11 JUDGE BRODSKY: So noted.

12 BY MS. BUGEL:

13 Q Mr. Harms, earlier in this proceeding we
14 covered the marginal cost of gas supply with
15 Mr. Gorenz. Today I would like to cover the average
16 cost of gas supply with you.

17 In your position as manager of rate
18 research, are you familiar with the average cost of
19 gas supply on a monthly basis?

20 A I'm familiar with what we file under our
21 Rider 6 gas supply charge for that cost of gas on a
22 monthly basis.

1 Q And the Rider 6 gas supply cost filings
2 determine the rate at which customers will be billed
3 for gas supply costs in the coming month?

4 A That is correct.

5 Q And gas supply costs are passed directly
6 through to customers?

7 A Correct.

8 Q So when Nicor makes its Rider 6 filings, it
9 attempts to make an accurate estimate of what it will
10 actually be paying on average per therm in a coming
11 month?

12 A Yes.

13 Q And the difference between gas supply
14 revenue collected and actual gas costs incurred is
15 adjusted in future Rider 6 filings?

16 A The revenue recovered versus the expenses
17 that are accounted for and incurred during the month
18 are reconciled on a monthly basis and an annual
19 basis.

20 Q On average, how far off is the estimate
21 from actual gas supply costs in cents per therm?

22 A I don't know that.

1 MS. BUGEL: No further questions.

2 JUDGE BRODSKY: I know we had started on this
3 but for some reason it was not clear. ELPC Exhibit 7
4 is admitted.

5 MS. BUGEL: Thank you.

6 (Whereupon, ELPC
7 Exhibit No. 7 was
8 admitted into evidence as
9 of this date.)

10 JUDGE BRODSKY: Let me see, okay. The next
11 party to have cross?

12 MR. GARG: Your Honor, the Attorney General's
13 Office would like to do cross.

14 JUDGE BRODSKY: Okay. Please proceed.

15 CROSS-EXAMINATION

16 BY

17 MR. GARG:

18 Q Mr. Harms, please refer to Page 42 of your
19 rebuttal testimony, Nicor Exhibit 32.0.

20 A Which page was it?

21 Q It's Page 42, Lines 899 to 904 you state,
22 Mr. Effron has not taken into account that Nicor Gas'

1 existing 2 million residential customers have shown
2 that they continue to conserve and reduce their
3 usage; correct?

4 A That is correct.

5 Q Please refer to Nicor's Schedule E-4 and if
6 you don't have a copy, I can provide one.

7 A I do not have one. Thank you.

8 MR. GARG: May we approach the witness, your
9 Honor?

10 JUDGE BRODSKY: You may.

11 MR. RATNASWAMY: Could I just ask, is this E-4
12 as filed in --

13 MR. GARG: Yes.

14 BY MR. GARG:

15 Q If you could refer to Page 2, Rate 1. The
16 Company is adding residential customers in 2004 and
17 in 2005; correct?

18 A Yes, they are.

19 Q However, in the Company's forecast, the
20 effect of conservation outweighs the effect of the
21 customer additions and the Company is forecasting a
22 decrease in sales from 2004 to 2005; correct?

1 A The Company is forecasting a decrease,
2 whether it's conservation or conservation and other
3 items, that is the total impact that we've forecasted
4 for 2005.

5 Q Please refer to Nicor Schedule G-5. And if
6 you don't have a copy, I can provide you with one.

7 A Thank you.

8 MR. GARG: May we approach the witness, your
9 Honor?

10 JUDGE BRODSKY: Yes.

11 BY MR. GARG:

12 Q This schedule is a description of the
13 assumptions used in the forecast of test year rate
14 base revenues and expenses; correct?

15 A This appears to be a portion of all the
16 assumptions that were used in the forecast.

17 Q Please refer to Page 2.

18 A That's the one I have.

19 Q Okay. In the middle of the page there's an
20 explanation of the assumption regarding customer
21 additions; correct?

22 A Yes.

1 Q Does it state, Delivery growth attributable
2 to new customers and process changes is expected to
3 more than offset a forecasted load loss due to
4 natural gas conservation?

5 A It says, Delivery growth attributable to
6 these new customers and commercial, industrial
7 process changes is expected to more than offset a
8 forecasted load loss due to natural gas conservation.

9 Q Please refer to Company work paper WPE 4.

10 MR. GARG: I'd like to mark that as AG Cross
11 Exhibit 10.

12 (Whereupon, AG Cross
13 Exhibit No. 10 was
14 marked for identification
15 as of this date.)

16 BY MR. GARG:

17 Q Can you refer to Page 2. The work paper
18 shows actual therm sales for 2003 and forecasted
19 sales for 2004 and 2005; correct?

20 A Which page number?

21 Q This is Page 2 of 15.

22 A Could you please restate the question?

1 Q The work papers show actual therm sales for
2 2003 and forecasted sales for 2004 and 2005?

3 A No, sir. It shows normal therm sales for
4 all three years.

5 Q In the middle of the page there's a line
6 with the caption, Total in bold, with three asterisks
7 by it?

8 A Yes, sir, I have that.

9 Q And that line shows total sales decreasing
10 from 4,908,032,000 therms in 2004 to 4,893,671,000
11 therms in 2005; is that correct?

12 A That is correct.

13 MR. GARG: If I could just have one second,
14 your Honor.

15 BY MR. GARG:

16 Q Mr. Harms, the normal numbers were provided
17 in order to obtain a forecast; is that correct?

18 A The normal numbers are a part of the
19 forecast.

20 Q How do you reconcile these figures with the
21 statement on Schedule G-5 that the delivery growth
22 attributable to new customers in process changes is

1 expected to more than offset forecast load loss due
2 to natural gas conservation?

3 THE REPORTER: Can you repeat that?

4 BY MR. GARG:

5 Q How do you reconcile these figures with the
6 statement on Schedule G-5 that the delivery growth
7 attributable to new customers and process changes is
8 expected to more than offset a forecast in load loss
9 due to natural gas conservation?

10 A I'm not certain that I can reconcile those
11 but there are two factors that I would take into
12 consideration since I have not reviewed all of the
13 assumptions used in the forecast. I know that our
14 traditional forecasting methods starts with total
15 send out. And at the time that the Company developed
16 the normalized therm deliveries for the test year was
17 in early part of 2004, and I'm not certain if the
18 more recent forecast addressed a different total than
19 what we have here for 2004; but my recollection is is
20 that it was going to more than offset what we
21 anticipated to be the conservation impact.

22 Q Please refer to your surrebuttal testimony,

1 Exhibit 44.0, Page 29, Line 643 to Lines 651, you
2 state, The result of our forecast is that a decline
3 in usage for the average residential customer from
4 the test year will be 21 therms which is the average
5 decline over the last two years; correct?

6 A That is correct.

7 Q Do you mean this decline forecasted by the
8 Company for 2005 approximates the two-year average
9 decline of 2003 and 2004?

10 A What I'm referring to here is an exhibit
11 that I had, 32.9.

12 Q Okay. Do you mean, though, that the
13 decline forecasted by the Company for 2005
14 approximates the two-year average decline in 2003 and
15 2004?

16 A Yeah. I'm referring to Line 5 on my
17 Exhibit 32.9 which shows the change in normalized use
18 per customer. Once 2004 was over, we went back and
19 normalized the actual use for our residential
20 customers; that showed an actual decline of 12 therms
21 per customer. We had an actual decline in 2003 of 31
22 therms and --

1 MR. GARG: Excuse me. Your Honor, I'd like to
2 move to strike the response. I'm simply asking if
3 Mr. Harms' reference to 21 therms is the average
4 decline of -- the average decline over the last two
5 years.

6 MR. RATNASWAMY: Your Honors, I believe the
7 answer was responsive, although it was cutoff in the
8 middle.

9 JUDGE ARIDAS: Are you looking just for a yes
10 or no?

11 MR. GARG: I am.

12 JUDGE ARIDAS: Do you want to answer yes or no?

13 THE WITNESS: I think the exhibit speaks for
14 itself, that it's the average normalized actual use.

15 MR. GARG: Thank you.

16 BY MR. GARG:

17 Q Referring to your Exhibit 32.9, would you
18 agree that the three-year average from 2002 to 2004
19 the decrease in use per residential customer is about
20 10 therms per customer per year?

21 A The average of the three numbers for those
22 years on Line 5 is about a -- minus 10 therms.

1 Q Thank you. Please refer to your
2 surrebuttal testimony, Exhibit 44.0, Page 29, Line
3 648. You state, Because Nicor Gas is not updating
4 all of its billing determinants, it is inappropriate
5 to change only one class; correct?

6 A Correct.

7 Q Please refer to Mr. Effron's rebuttal
8 testimony and I can provide you with a copy.

9 MR. GARG: May we approach the witness, your
10 Honor?

11 JUDGE BRODSKY: You may.

12 BY MR. GARG:

13 Q Please refer to Page 22, Lines 13 to 21 and
14 please take a moment to read those lines.

15 A I've read it.

16 Q It's here that Mr. Effron states, This 2005
17 residential sales reflects a reduction of
18 approximately 3 therms per customer per year;
19 correct?

20 A That's his estimate, yes.

21 Q And Mr. Effron makes that calculation based
22 upon the forecasted 2004 residential sales shown on

1 Company Schedule E-4; correct?

2 A That's his statements.

3 Q The Company Schedule E-4 was included in

4 the Company's original 285 filings; correct?

5 A Correct.

6 Q If Mr. Effron is adjusting the Company's

7 forecast based on data in Nicor's original filing,

8 then he's not proposing any updating of the sales

9 forecast; correct?

10 A I would disagree with that.

11 Q Would you agree that Mr. Effron is not

12 proposing to bring in any new data; instead, he's

13 using data provided by the Company in its original

14 filing?

15 A Yes.

16 MR. GARG: Thank you.

17 No further questions.

18 I do move for the admission of

19 AG Cross Exhibit 10.0.

20 MR. RATNASWAMY: I'm sorry, which one is that?

21 MR. GARG: AG Cross Exhibit 10.0, the work

22 paper.

1 JUDGE BRODSKY: Is there any objection?

2 MR. RATNASWAMY: No, your Honor.

3 JUDGE BRODSKY: Then AG Exhibit 10 is admitted.

4 (Whereupon, AG Cross

5 Exhibit No. 10 was

6 admitted into evidence as

7 of this date.)

8 MR. GARG: Your Honors, at this time I only

9 printed out Page 2 of that cross exhibit. It's

10 actually 15 pages. If your Honors would like, we can

11 submit this now and submit the entire 15 pages today.

12 JUDGE BRODSKY: Exhibit 10 was work paper E-4;

13 wasn't it?

14 MR. GARG: Correct. And we referred to Page 2.

15 JUDGE BRODSKY: And you're saying you only have

16 Page 2?

17 MR. GARG: Yes.

18 JUDGE BRODSKY: Are you moving the whole thing?

19 MR. KAMINSKI: Your Honor, I apologize. The

20 issue is is that the stack of documents we gave you

21 has only, I believe, Page 2 of 15 on it. I'm not

22 sure if your stack has that. Is it just a couple

1 copies of the same page?

2 JUDGE BRODSKY: As far as I can tell, work
3 paper E-4 had all 15.

4 MR. KAMINSKI: Never mind. I'm sorry, it was
5 our confusion.

6 JUDGE ARIDAS: E-4 is all.

7 JUDGE BRODSKY: Is the item that you sent to
8 the court reporter complete, then?

9 THE REPORTER: It's pages 1 through 15.

10 JUDGE BRODSKY: Okay. Then we're fine. Thank
11 you.

12 Who wants to do the next set of cross?

13 MR. ROBERTSON: I'll go if nobody else wants
14 to.

15 MR. GARG: Your Honor, was the cross exhibit
16 admitted?

17 JUDGE BRODSKY: Exhibit 10? Yes.

18 MR. GARG: Thank you.

19 JUDGE ARIDAS: Go ahead, Mr. Robertson, please
20 approach one of the microphones.

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. ROBERTSON:

4 Q Hello again, Mr. Harms.

5 A Good morning.

6 Q My name is Eric Robertson. I represent the
7 Illinois Industrial Energy Consumers and I would like
8 to ask you whether or not you're generally familiar
9 with how Nicor plans its gas distribution system?

10 A Generally familiar.

11 Q Does -- based on that knowledge, do you
12 believe Nicor needs to expand its system of
13 distribution mains as new customers are added to the
14 system?

15 A Yes.

16 Q Could you tell me why you believe that is
17 the case?

18 A Normally when you have new customers,
19 they're located in -- a lot of them are located in
20 new territories where the Company does not already
21 have distribution main; and as a result, the Company
22 needs to extend its facilities out to serve the new

1 customers.

2 Q Now, does Nicor need to augment its
3 delivery capacity as a design day send out gross?

4 A Can you restate that, please.

5 Q Yes. Does Nicor need to increase its
6 delivery capacity as design day send out gross?

7 A It needs to increase its total system
8 capacity.

9 Q And could you explain why that is the case?

10 A Nicor Gas is a utility. It has an
11 obligation to meet the rights and needs of our
12 customers and our customers normally have their
13 greatest use on what we call a peak day.

14 Q And, therefore, the system has to be built
15 and designed to accommodate that peak day; is that
16 correct?

17 A Certainly.

18 Q Now, does Nicor need to expand its system
19 simply in response to growth and annual volumes
20 assuming everything else remains constant?

21 A Assuming the number of customers and their
22 locations remain constant, normally, we would not

1 have to increase distribution.

2 Q Has Nicor been expanding the number of
3 residential customers over the last 10 years?

4 A Yes.

5 Q Has growth helped -- has this growth in
6 residential customers helped Nicor's profits?

7 MR. RATNASWAMY: I'll object to the form of the
8 question, including ambiguity as to whether it's
9 addressed to Nicor, Inc., or Nicor Gas.

10 MR. ROBERTSON: The utility, Nicor Gas.

11 THE WITNESS: The expansion of our facilities
12 has certainly increased our annual revenue but I
13 believe our expenses and investment have increased
14 substantially and have been part of the contributing
15 factor to this rate request.

16 BY MR. ROBERTSON:

17 Q Would another way to say that be that
18 you're not recovering a sufficient amount of revenue
19 from these new customers to cover the costs
20 associated with serving them?

21 A I'm not certain I would just say just with
22 new customers, but also with existing.

1 Q Now, is the trend in residential customer
2 growth expected to continue?

3 A In terms of number of customers?

4 Q Yes.

5 A Yes.

6 Q Now, if the Commission in this case were to
7 approve a revenue allocation that for one reason or
8 another did not recover the full costs of serving
9 residential customers and Nicor continued to
10 experience growth in residential customers, what
11 would be the likely result in your opinion?

12 A The Company would most likely have to
13 request an increase.

14 Q Could you please -- do you have a copy of
15 IIC -- your response to IIEC data request 1.01? Do
16 you have a copy of that data request now, Mr. Harms?

17 A Yes, I do.

18 Q And you are the witness who has prepared
19 the response to -- respond to questions regarding
20 this response?

21 A Yes.

22 Q Now, as I review the response, it looks

1 like Nicor has been losing Rate 76, 77 and Rider 17
2 load since 1995; is that a fair reading of that data
3 response?

4 A Yes.

5 Q Now, with regard to Rider 17, what type of
6 load is typically on that rate?

7 A Rate 17 as we have here -- and which has
8 been denoted in our case mainly as individually
9 negotiated contracts -- we have a Rate 17 that is
10 individually negotiated contracts associated with
11 anti-bypass, in other words, large customers that can
12 directly hook up to an interstate pipeline to bypass
13 our system. The Rate 19 are our contracts that we
14 have with large electric generation plants.

15 Q And the Rate 17 customers would be
16 typically large manufacturing industrial customers?

17 A Yes.

18 Q Now, Rate 77, what types of customers would
19 be primarily on Rate 77?

20 A Rate 77 customers are very similar to the
21 contract customers in that they are very large,
22 usually manufacturing processing-type customers.

1 Q And, finally, the types of customers that
2 are most likely to be on Rate 76?

3 A Rate 76 customers in general are slightly
4 smaller than our Rate 77 customers. Again, a lot of
5 that use is related to processing space heat, those
6 types of operations. They typically have a load
7 factor that is probably a little bit lower than our
8 Rate 77 customers.

9 Q Now, is it correct that in 1995 the
10 Commission first approved the average peak method for
11 Nicor's -- use of Nicor's Cost of Service Study?

12 A That was approved officially, I believe, in
13 April of '96.

14 Q And prior to that time, the Company used
15 the coincident peak methodology for allocation of
16 mains in its Cost of Service Study; is that correct?

17 A Yes, it is.

18 Q Now, if the Commission in this case were to
19 approve a revenue allocation that for one reason or
20 another resulted in inordinately large increases to
21 Rate 77 and Rate 76 customers, would you anticipate
22 or what -- would you anticipate the loss of

1 additional industrial loads?

2 MR. FOSCO: Your Honor, could I object? The
3 word "inordinately large" seems vague to me. The
4 question is vague.

5 JUDGE BRODSKY: Sustained as to form.

6 You may rephrase.

7 BY MR. ROBERTSON:

8 Q How about increase of 70 percent.

9 A I would think an increase of 70 percent
10 would cause some customers to revisit their
11 operations.

12 Q Of course, increases larger than that might
13 also produce the same result?

14 A Yes.

15 Q Do you believe -- could the loss of
16 additional industrial load lead to the necessity to
17 file additional rate cases?

18 A Yes.

19 Q Now, could you please turn to Nicor Gas
20 Exhibit 32.0, your rebuttal testimony Page 6. Now,
21 in this portion of your testimony, you discuss and
22 describe in greater detail the Company's MDM Study;

1 is that correct?

2 A Yes, I do.

3 Q And just to refresh the record and make
4 sure it's clear, what does the acronym MDM Study
5 stand for?

6 A Modified distribution main.

7 Q Now, is the MDM methodology that you
8 explain here at this portion of your rebuttal
9 testimony the same MDM Study that was -- methodology
10 that was approved in Docket 95-0129?

11 A Yes, it is.

12 Q And did the Staff of the Illinois Commerce
13 Commission accept the use of the MDM methodology
14 described here in Docket 95-0129?

15 MR. FOSCO: Your Honor, objection. Foundation.

16 BY MR. ROBERTSON:

17 Q Have you reviewed the order in 95-0129?

18 A If that's the last rate case order, yes, I
19 did.

20 Q And were you a witness in that case?

21 A Yes, I was.

22 Q And you presented cost -- service testimony

1 in that case?

2 A No, I did not.

3 Q Are you familiar with the position Staff
4 took in the case either based upon your participation
5 or your review of the order in Docket 95-0129?

6 A I am familiar with Staff's position on both
7 of those points.

8 Q Now, did the Staff of the Illinois Commerce
9 Commission approve the MDM methodology that you
10 describe here in your testimony in Docket 95-0129?

11 A Yes, they did.

12 Q Now, do you state, That the MDM methodology
13 is an engineering analysis that determines peak flows
14 for each distribution main in service and what
15 percentage of those peak flows is attributed to each
16 customer class; is that correct, at this location in
17 your testimony?

18 A That is correct.

19 Q Now, so the study -- the MDM Study is an
20 empirical study; is that correct?

21 A Yes, it is.

22 Q Would you please briefly tell us why Nicor

1 undertook this study in the first place?

2 A Nicor, in its Cost of Service Study,
3 believes that cost should be assigned to those groups
4 of customers that cause the cost; and looking at each
5 individual rate class to see what sizes of main are
6 needed to serve them and to serve their peak day, to
7 us, appeared to be a more accurate and a better
8 method of allocating main costs as opposed to just a
9 general allocator which would allocate anything from
10 a 2-inch main on up across all customer classes
11 regardless of the size of distribution main our
12 customers were attached to.

13 Q Now, do allocation methods such as the
14 coincident peak method or the average and peak method
15 or any of the other methodologies used for allocation
16 of mains among the various classes make any
17 distinction -- strike that.

18 Do they distinguish between the
19 various -- the extent to which different size
20 customers use various size mains in the same manner
21 as the MDM Study?

22 A An average and peak or coincident peak

1 method used by itself to allocate distribution main
2 would not do as accurate of a job as the MDM would
3 do.

4 Q Now, is the MDM, as an empirical study,
5 combined to only a portion of the mains or does the
6 study encompass the entire system of mains for Nicor?

7 A The MDM Study that we produced is for
8 distribution main only.

9 Q Now, would you refer to your Exhibit 32.1
10 of your rebuttal testimony.

11 A I have that.

12 Q Now, does this exhibit represent the result
13 of the MDM Study?

14 A This is the result of the Company's MDM
15 Study.

16 Q I notice that in the bottom right-hand
17 lower corner of this exhibit the \$1,381,809,000
18 represents what?

19 A The total distribution main.

20 Q Now, the distribution mains are included in
21 Account 376; is that correct?

22 A I'm not certain of the account but they are

1 included in the accounts of the company.

2 Q Would you agree that distribution main
3 investment is a major item of Nicor Gas rate base?

4 A Yes.

5 Q Could it be the biggest component of the
6 rate base?

7 A Yes.

8 Q So would you agree or disagree that any
9 Cost of Service Study that misallocated this portion
10 of the Nicor investment would be unreliable?

11 A It would be unreliable in terms of
12 allocating costs, yes.

13 Q Now, would you agree, based on the matrix
14 shown on Exhibit 32.1, that Rate 77 does not make use
15 of 2-inch mains?

16 A That is correct.

17 Q Would you agree that Rate 76 uses only a
18 tiny fraction of 2-inch mains, less than 1 percent?

19 A Yes.

20 Q Would you agree that -- now, is one of the
21 reasons these customers are -- the primary reason
22 these customers are not served by 2-inch mains is

1 that it would be uneconomic, if not physically
2 impossible to do so?

3 A You could serve these customers off of
4 2-inch mains if you had multiple mains going to that
5 location; but, certainly, with the load that we have
6 for these customers, most of them cannot take service
7 off of a 2-inch main.

8 Q Now, would you agree that there are
9 economies of scale involved in serving these large
10 volume customers?

11 A Yes.

12 Q And these economies of scale would dictate
13 the use of the large mains to serve; is that correct?

14 A That's part of it, yes.

15 Q Now, would you agree that Nicor
16 Exhibit 32.1 shows that 2-inch mains represent over
17 half of the total investment and distribution mains
18 for Nicor Gas?

19 A It does.

20 Q Now, could we go back to Page 7 of
21 Exhibit 32, your rebuttal testimony. Now, on this
22 page of your rebuttal testimony you have a Table 1;

1 is that correct?

2 A Yes, I do.

3 Q And this table represents peak day flows;
4 is that correct?

5 A Yes. I presented here an example of three
6 customers and how their peak day flow usage might
7 occur.

8 Q And this is part of your explanation of how
9 the MDM Study works?

10 A Yes.

11 Q And I understand that Table 2 at Page 8 of
12 Nicor Exhibit 32 represents or turns these peak day
13 flows shown in Table 1 into allocation percentages
14 for each size main; is that correct?

15 A That's correct.

16 Q Now, are you aware that the Staff Witness
17 Luth favors using average day flows in the allocation
18 process, not just peak day flows?

19 A I'm not sure that the Staff witness uses
20 average day flows. He has changed the peak day
21 allocations from what the Company has determined it
22 should be and that, in -- his results, then changed

1 the allocation.

2 Q So I'm clear, are you suggesting,
3 Mr. Harms, that you're not exactly sure what the
4 Staff witness did?

5 A My understanding of what the Staff witness
6 did with the MDM Study is that he modified the amount
7 of peak day use by Rate 1, Rate 4 and Rate 17;
8 changed the peak day use to a different number and
9 then used that allocation for his own MDM Study.

10 Q Now, would you agree that the average and
11 peak method is really just a weighted average of a
12 peak day allocator and an average day allocator?

13 A You can calculate it that way.

14 Q Now, if one knows the load factor of each
15 class, am I correct that the average day use of any
16 class is simply -- can be determined simply by the
17 product of its peak day usage times its load factor?

18 A The annual load factor for a class can be
19 multiplied by its peak day to come up with an
20 average -- average usage day.

21 Q Now, would it be -- could one develop a
22 table analogous to your Table 1 at Page 7 but with an

1 average day use instead of a peak day use in each
2 cell?

3 A Yes.

4 Q And could one, then, take that table and
5 convert it into percentages as you did on Table 2 of
6 Page 8 of your testimony?

7 A Yes.

8 Q And if we did that, would it be possible to
9 take the weighted average of the percentages shown on
10 your Table 2 and the percentages that we developed by
11 converting the average day flows to percentages and
12 come up with an alternative type of MDM Study based
13 on average demands?

14 A I'm not sure I understand the question.

15 JUDGE BRODSKY: Mr. Robertson, if you want a
16 few minutes, we could take that. We could use a few
17 minutes break.

18 MR. ROBERTSON: That would be great.

19 JUDGE BRODSKY: Let's do that. Let's take
20 10 minutes.

21 (Recess taken.)

22 BY MR. ROBERTSON:

1 Q Mr. Harms, I'd like to make sure that you
2 and I had a clear understanding of a question that I
3 asked previously. It is my understanding that the
4 Staff Witness Luth favors the use of the average and
5 peak method because he believes that one should
6 consider average flows as well as peak day flows in
7 the allocation of distribution mains, do you agree
8 with that?

9 MR. FEELEY: I'm going to object to the
10 question. He's asking him his opinion of Mr. Luth's
11 testimony and, you know, if he has a question of what
12 Mr. Luth testified to, he can cross-examine him on
13 that.

14 JUDGE BRODSKY: Can you rephrase the question?

15 MR. ROBERTSON: Well, the witness response to
16 Mr. Luth's testimony is in his surrebuttal testimony
17 and I think I'm -- since he's taking the opportunity
18 to do that, I think I'm entitled to explore his
19 understanding of Mr. Luth's testimony but let me try
20 to rephrase.

21 BY MR. ROBERTSON:

22 Q Would you accept, subject to check, that

1 Mr. Luth testifies that the A & P is a blend of the
2 share that a class size demands adds to a peak day
3 and the share of use by each class size on an average
4 day at Pages 6 and 7 of Staff Exhibit 7.0?

5 A Subject to check.

6 Q And would that suggest to you that the
7 A & P Method may have been proposed by Mr. Luth here
8 because he believes that average day flows should be
9 considered in the allocation of mains?

10 A My understanding of Staff Witness Luth's
11 position is that average day flows should be
12 considered.

13 MR. ROBERTSON: Now, I think I'm on Cross
14 Exhibit -- Exhibit 4.

15 (Whereupon, IIEC Cross
16 Exhibit No. 4 was
17 marked for identification
18 as of this date.)

19 BY MR. ROBERTSON:

20 Q I'd like to show you what I've asked the
21 reporter to mark as IIEC Cross Exhibit No. 4. Now,
22 the first page of this exhibit consists of three

1 tables marked as Table 1, Table 1-A and Table 2. Is
2 Table 1 on this exhibit the equivalent of Table 1
3 shown on Page 7 of your rebuttal showing the usage
4 flow on peak day for your three hypothetical
5 customers taking service from a 2-inch, 4-inch and
6 8-inch main?

7 A Yes, it is.

8 Q Now, is Table 1-A a matrix similar to the
9 matrix -- a format of a matrix in your Table 1 but
10 which uses average day flows for the same three
11 hypothetical customers in the same 2-inch, 4-inch and
12 8-inch main?

13 A It appears to be.

14 Q Now, is Table 2 on this page, a table that
15 shows information from Table 1 on this page as a
16 percentage of peak day usage by main size on the
17 2-inch, 4-inch, 8-inch mains for the same three
18 hypothetical customers?

19 A Yes, it is.

20 Q Is Table 2 on this exhibit equivalent to
21 your Table 2 in your rebuttal, Nicor Exhibit 32 at
22 Page 8?

1 A Other than rounding, yes.

2 Q Now, would you go to the second page of
3 this exhibit. The first table along this page is
4 marked as Table 2-A. Now, is Table 2-A, which is
5 marked as the percentage of average day usage by main
6 size, does this show the average day usage for the
7 same three hypothetical customers for the 2-inch,
8 4-inch, 8-inch mains based on the assumptions about
9 their average day use shown in Table 1-A on the first
10 page of this exhibit?

11 A Yes.

12 Q Now, the next table, the second table on
13 the second page is entitled, Average and Peak Usage
14 By Main Size. Now, would you agree that this
15 represents the weighted average of the percentage of
16 peak day usage by main size shown on Table 2 and the
17 percentage of the average day usage by main size
18 shown on Table 2-A?

19 A Those flows are weighted by 50 percent of
20 each of those respectable tables.

21 Q Now, the last table on Page 2 is entitled,
22 A & P allocation by main size; is that correct?

1 A Yes.

2 Q Now, assuming the investment in a 2-inch
3 main was \$600 and the investment in a 4-inch main was
4 \$100 and the investment in the 8-inch main was \$300,
5 would you agree that this table illustrates the
6 allocation of main investment that would result if we
7 combined the A & P Method and the MDM Study in the
8 manner suggested by the preceding tables?

9 A Yes, I would.

10 Q Now, is it your understanding -- finally on
11 Page 3 of this exhibit, there's a table which
12 illustrates -- would you agree that this table
13 provides a hypothetical illustration of how Staff
14 Witness Luth attempted to combine the A & P Method
15 and the MDM Study?

16 A The results in the box on the far right
17 would appear to be as to how Mr. Luth did that; but I
18 would note that Mr. Luth also changed the peak day
19 allocation at the same time. So his main allocation
20 is done in this fashion.

21 Q Okay. Now, does the -- would you agree
22 that this exhibit also illustrates the difference

1 between using the average and peak method for the MDM
2 assignment and using a weighted average of the MDM
3 Study and a volume metric allocator?

4 A Both within the MDM Study?

5 Q Yes.

6 A Yes, it does.

7 Q Now, could you, referring to this exhibit,
8 tell me whether the dollar allocation to Customer C
9 under the average and peak version of the MDM Study
10 is \$185? That's shown on Page 26 in the third table,
11 average and peak allocation by main size.

12 A The amount for Customer C under this
13 hypothetical methodology is 185.

14 Q And that is greater than the \$150 you
15 derived for your hypothetical Customer C on Table 3
16 at Page 8 of Nicor Exhibit 32.0; is that correct?

17 A That is correct.

18 Q Now, referring to IIEC Exhibit 4, Page 3 of
19 3, would you agree that the dollar amount of main
20 invested allocated to Customer C under the Staff's
21 method is \$442?

22 A With this set of assumptions, yes, I would.

1 Q Now, would you also agree that Customer C,
2 both in your rebuttal testimony and in this exhibit
3 is shown to make use of only the 8-inch mains on the
4 system?

5 A Yes.

6 Q And total amount of the cost of the 8-inch
7 mains for this customer is \$300 on the exhibit, the
8 Cross Exhibit 4?

9 A The total cost of 8-inch main for all
10 customers is 300.

11 Q Now, is it logical to allocate \$442...

12 A I'm sorry, is that a question?

13 Q I'm thinking about it. I'm trying to
14 phrase it into a proper question.

15 Would it be logical, in your opinion,
16 to allocate \$442 of main costs to Customer C when the
17 total cost of mains is only \$300?

18 A No, it is not.

19 Q Now, would you agree that if a customer
20 does not use 2-inch mains on a peak day, the customer
21 does not use 2-inch mains on the average day?

22 A Yes, I would.

1 Q Would you agree that a customer who does
2 not use 4-inch mains on the peak day does not use
3 2-inch mains on the average day -- I'm sorry, does
4 not use 4-inch mains on the average day?

5 A Yes, I would.

6 MR. ROBERTSON: Now, would you -- I'd like to
7 move for the admission of IIEC Cross Exhibit 4.

8 MR. FEELEY: Objection. Foundation. This
9 cross exhibit really seems to be something that
10 should be directed to Mr. Luth and proper foundation
11 hasn't been laid because he hasn't been
12 cross-examining Mr. Luth, he's been talking to
13 Mr. Harms.

14 MR. ROBERTSON: Well, your Honor, posing
15 hypotheticals to witnesses in these types of
16 proceedings is difficult and having an exhibit which
17 demonstrates the hypothetical and which is, in fact,
18 based on the hypothetical approach taken by the
19 witness in his own testimony is proper
20 cross-examination and the witness has accepted the
21 study and identified -- or the exhibit and identified
22 what it does and how it relates to what he did and I

1 think it's proper cross and I think it's properly
2 admitted to illustrate the hypothetical questions
3 that were put to the witness.

4 JUDGE BRODSKY: The objection is overruled.
5 Are there any further objections?

6 (No response.)

7 Hearing none, then IIEC Exhibit 4 is
8 admitted.

9 (Whereupon, IIEC
10 Exhibit No. 4 was
11 admitted into evidence as
12 of this date.)

13 BY MR. ROBERTSON:

14 Q Now, would you please turn to your rebuttal
15 testimony, Nicor Exhibit 2, Page 40.

16 A Yes.

17 Q Now, there starting on Line 854 you refer
18 to the Staff adjustment relating to a 2 percent
19 storage withdrawal adjustment; is that correct?

20 A That is correct.

21 Q Is that adjustment currently accommodated
22 in the lost and unaccounted for gas factor?

1 A For transportation customers it is.

2 Q And is the storage adjustment factor
3 approximately \$16.6 million?

4 A That is the value that the Company has
5 calculated for that factor for the test year.

6 Q Now, when you wrote this section of your
7 rebuttal testimony, did you believe that the Staff
8 was proposing to switch the entire \$16.6 million into
9 base rates?

10 A Yes, I was.

11 Q And is that why you stated that you would
12 need to adjust the SBS charge for that amount?

13 A That is correct.

14 Q And SBS stands for storage balancing
15 service?

16 A Storage banking service.

17 Q Storage banking service, thank you.

18 However, if the entire \$16.6 million
19 in base rates, there would have to be an adjustment
20 someplace else; is that correct?

21 A If the entire amount goes in?

22 Q Yes.

1 A There needs to be an adjustment made to the
2 cost of service studies.

3 Q Now, at the time you wrote your
4 surrebuttal, did you have a somewhat clearer notion
5 of what Staff's position on this was?

6 A On surrebuttal, it was my understanding
7 that Staff was proposing -- I believe as I state in
8 my surrebuttal, Staff is proposing to assess the 2
9 percent storage withdrawal factor to sales customers
10 through their base rates and continue to allow
11 transportation customers to compensate the Company
12 for that through the last and lost and unaccounted
13 for factor.

14 Q Now, would it be correct, based on your
15 current understanding, that whether the Commission
16 accepts the Staff's position on the 2 percent issue
17 or whether it accepts Nicor's position, there should
18 be no impact on the SBS charge?

19 A If those are the only two selections,
20 that's correct.

21 Q In your surrebuttal testimony, Exhibit 44.2
22 you have presented the revenue requirement of four

1 embedded costs of service studies. The first two of
2 which -- Columns B and C on that exhibit are labeled,
3 Nicor; is that correct?

4 A Which exhibit was that, please?

5 Q 44.2.

6 A Yes, that's correct.

7 Q Now, is it also correct -- which of the
8 four cost of service studies did Nicor use for
9 allocation of the Nicor revenue requirement on this
10 exhibit?

11 A The allocation of the revenue requirement
12 that the Company is suggesting in its surrebuttal
13 testimony is based upon Column C, of course, with the
14 limiting factor for residential customers.

15 Q Are you referring to Column C on Page 1 or
16 Column C on Page 2?

17 A I'm sorry, my 44.2 only has Page 1.

18 Q All right. Now, is the study that's shown
19 or illustrated in Column B the allocation recommended
20 in your direct case?

21 A The one in Column B was the Company's
22 embedded Cost of Service Study in our direct case.

1 Our recommendation for revenue allocation to the
2 rates was based upon our marginal Cost of Service
3 Study.

4 Q All right. Now, did Mr. Heintz present
5 three embedded cost of service studies in this case,
6 one in direct, one in rebuttal and one in
7 surrebuttal?

8 A Mr. Heintz supported one in direct which is
9 the one that I refer to here. My recollection of the
10 rebuttal testimony was a modification to correct some
11 of Staff's adjustments in their version of the
12 embedded cost study which was in rebuttal.

13 I don't believe he was sponsoring that
14 as an appropriate Cost of Service Study but wanted to
15 simply show what Staff's model would have been with
16 those corrections. He did, in his surrebuttal,
17 sponsor the one that is shown here in Column C.

18 Q Now, does Column B -- Column B represents
19 the Cost of Service Study presented in direct
20 testimony; is that correct?

21 A In Mr. Heintz's direct testimony.

22 Q Now, am I correct that the revenue

1 requirement for Rate 77 under Column B is \$5,482,000?

2 A Million dollars.

3 Q Million dollars, excuse me. So that would
4 be correct?

5 A 5,482,000, I'm sorry, you're correct.

6 Q Now, would you agree that that is less than
7 the current revenue of \$5,528,000 produced by
8 Rate 77? And I refer you to your Exhibit 44.3, Page
9 1 of 2 Column B, Line 10.

10 A That is correct.

11 Q So, would you agree that based on the Cost
12 of Service study shown in Column B of your
13 Exhibit 44.2, Rate 77 would ordinarily be entitled to
14 a decrease?

15 A Subject to reviewing what the current
16 storage banking service selections are on that, I
17 would agree with that.

18 Q In your surrebuttal testimony, Exhibit 44.0
19 on Page 12 you state that you are now proposing to
20 use the embedded Cost of Service Study as a guide to
21 allocation of the revenue requirement in this case;
22 is that correct?

1 A That is correct.

2 Q And is your proposed allocation of the
3 revenue requirement shown on Exhibit 44.3, Page 2?

4 A Yes, it is.

5 Q Now, as I understand it, this exhibit --
6 Column D of this exhibit represents your proposed
7 allocation; is that correct?

8 A It represents the Company's proposed
9 allocation including the two proposed adjustments
10 that we had in our direct testimony on the
11 appropriate treatment of hub revenue and
12 uncollectible expense.

13 Q Now, this column shows the increase to each
14 class, the objective is to bring each class a cost of
15 service; is that correct?

16 A With the exception of Rate 1, which we
17 limit the increase to.

18 Q Now, you are not proposing to --

19 MR. RATNASWAMY: I'm sorry, Mr. Robertson,
20 because of various reasons, I couldn't hear which
21 column the last two questions pertained to.

22 MR. ROBERTSON: Column D.

1 MR. RATNASWAMY: I'm sorry, which?

2 MR. ROBERTSON: Of Exhibit 43.2 -- 44.3 excuse
3 me.

4 MR. RATNASWAMY: Thank you.

5 BY MR. ROBERTSON:

6 Q That's the one you've been talking about as
7 well; is that correct, Mr. Harms?

8 A Yes, it is.

9 Q Now, I think you've just indicated that the
10 Company is not proposing to spread the increase in
11 accordance with Column D because there's a limitation
12 on the increase to the residential class; is that
13 correct?

14 A No. I believe that Column D reflects the
15 Company's limiting the residential class to a certain
16 increase and then spreading the increase over the
17 commercial industrial rates.

18 Q Okay. What is shown in Column E of
19 Exhibit 44.3?

20 A Column E is the resulting revenue
21 allocation assuming that the Company's proposal to
22 pass a portion of the uncollectible expense through

1 the Rider 6 gas supply cost is denied.

2 Q So the -- at Line 1, Rate 1, the
3 55,670,000; is that a correct figure? Line 1,
4 Column E, as an echo, for Rate 1?

5 A I'm sorry, could you ask the question
6 again?

7 Q Yes. I'm looking at Page 2 of
8 Exhibit 43.3, Line 1, Column E and I'm asking what
9 that represents as compared to Line 1, Column D?

10 A Okay. Line 1 for the residential Rate 1 of
11 322 million is the current revenue. If we look at
12 the next column, which is Column C, there we see 378
13 million, that is the 55 million increase we are
14 proposing for residential customers.

15 Q Okay.

16 A If you go to the next one, which is
17 Column D, which is 365 million, included in that 365
18 is the net adjustment for the hub revenue and for the
19 uncollectible expense.

20 Q I see where the discrepancy has come. I'm
21 looking at Page 2, you're looking at Page 1?

22 A Yes.

1 MR. ROBERTSON: Okay. May I approach the
2 witness?

3 JUDGE BRODSKY: You may.

4 BY MR. ROBERTSON:

5 Q You're looking at Page 1 of 2 instead of
6 Page 2 of 2 of the exhibit, are you not?

7 A 1 of 2 on Exhibit 44.3.

8 Q Okay. I apologize, Mr. Harms. I've
9 confused you and myself. I've been referring to
10 Exhibit 44.3, Page 2 of 2, Column D is the proposed
11 increase for each class if the objective was to bring
12 the class a cost of service; is that correct?

13 A Under this page; that is correct.

14 Q And Column E shows the proposed increase
15 for the classes based on Nicor's proposed allocation;
16 is that correct?

17 A Correct.

18 Q And the residential class has been limited
19 to a 56 -- roughly, a \$56 million, a 72 percent of
20 total revenue increase; is that correct?

21 A Correct.

22 Q And this limitation -- this particular

1 limitation is the only limitation the Company has
2 identified moving all classes to cost of service; is
3 that correct?

4 A Subject to recovering the entire revenue
5 increase, yes.

6 Q Now, you limit the Rate 1 increase in part
7 about -- was one of the reasons the residential class
8 Rate 1 was limited a concern about moving rates and
9 costs on a gradual basis?

10 A Gradualism was one of our goals.

11 Q Do you know -- is the concept of gradualism
12 limited only to certain classes?

13 A Not necessarily.

14 Q Now, would you turn to your rebuttal
15 testimony, Exhibit 32.0, Page 19, Line 389?

16 A Could you repeat that cite?

17 Q Exhibit 32.0, Page 19, Line 389. And there
18 you state that Nicor prefers to limit, depending on
19 the size of the allowed increase, the amount of
20 increase to the residential customer class; is that
21 correct?

22 A That is correct.

1 Q And what did you mean by the phrase
2 "depending on the size of the increase" in this part
3 of your testimony?

4 A My reference to the size of the increase is
5 more specifically to certain proposals to move cost
6 recovery out of what would currently be under the PGA
7 under the Company's Rider 6 gas supply cost and move
8 that into base cost recovery.

9 Q Were you referring as well to the overall
10 increase authorized by the Commission?

11 A I don't believe so. I think the Company's
12 position is that not one single rate last year
13 absorbed the entire increase.

14 Q Hypothetically, if the Commission were to
15 authorize an increase of \$1 million, would you still
16 propose that the 72 percent limitation apply to the
17 increase to the residential class?

18 A If the rate increase was that small, I
19 think practically speaking, you could put it in any
20 one of a number of classes.

21 Q If one of the principles of rate design is
22 to base rates upon cost of service and the \$1 million

1 increase was necessary in order to provide the
2 Company with the recovery of its full cost and
3 allocation of more than 72 percent to a single class,
4 move all rates of cost of service, would the Company
5 take advantage and do that?

6 A If it were a proper cost of service, the
7 Company would do that.

8 Q Now, can we go back to Exhibit 44.3, Page 2
9 of 2. Now, referring to Column D, as in dog, in that
10 exhibit, we've already noted that if Nicor were to
11 receive its full revenue request here, there would be
12 an increase necessary to the residential class of
13 approximately 76 million to move them to cost; is
14 that correct?

15 A I'm not sure I would categorize it as
16 moving them to cost. It would move them to the Cost
17 of Service Study as proposed under the average and
18 peak and using the MDM Study.

19 Q That would depend on the accuracy of the
20 study then?

21 A That would.

22 Q All right. And the -- would you agree that

1 the 76 million represents an increase of 23.5 percent
2 from current rates?

3 A Somewhere around that area.

4 Q Would you consider an increase of that size
5 to be excessive?

6 A No.

7 Q Would you agree or disagree that it was the
8 Company's position in the last case that the increase
9 authorized by the Commission in that case should be
10 spread among the rate classes in a manner that would
11 bring rates to parity?

12 A It was the Company's position to bring it
13 to an equalized rate of return based upon the Cost of
14 Service Study accepted in that case.

15 MR. ROBERTSON: I have no further questions.

16 Thank you, Mr. Harms.

17 CROSS-EXAMINATION

18 BY

19 MR. FEIN:

20 Q Good morning, Mr. Harms.

21 A Good morning.

22 Q David Fein on behalf of Constellation New

1 Energy Gas Division, LLC.

2 If you could turn to your rebuttal
3 testimony, Exhibit 32, beginning on Page 38.

4 And there you discuss the Company's
5 storage banking service proposal from a rate design
6 perspective. Do you see that portion of your
7 testimony, Mr. Harms?

8 A Yes, I do.

9 Q And at -- specifically at Lines 814 to 815
10 and rejecting Dr. Rosenberg's proposed adjustment to
11 the Company's method in determining the SBS charge,
12 you state that the denominator should be the amount
13 of gas actually anticipated to be cycled through
14 storage; is that a correct reading of your testimony?

15 A Yes, it is.

16 Q And the Company's proposed change to the
17 SBS charge is derived using a denominator of 120 BCF;
18 is that correct?

19 A Yes, it is.

20 Q And that 120 BCF is a forecasted number; is
21 that correct?

22 A Yes, it is.

1 Q And it's a forecasted number for the amount
2 of gases that the Company anticipates that it will
3 cycle through storage?

4 A Yes.

5 Q And you also state that it makes little
6 sense to use a number, which I assume you mean as the
7 denominator, that has never been cycled through
8 storage at Lines 815 to 816; is that correct?

9 A Yes, it is.

10 Q Now, isn't it correct to say that during
11 the Company's recent history of cycling storage, the
12 amount of gas actually cycled annually represents a
13 number greater than the 120 BCF that's being proposed
14 in this case?

15 A I don't know that.

16 Q So when you testify here regarding the
17 denominator, it is not based upon your knowledge of
18 what the Company has done historically; is that
19 correct?

20 A That's correct. It's based upon the
21 estimated number given, that's what the Company
22 anticipates to cycle for the test year.

1 Q And when you testified here on this topic,
2 again just so the record is clear, you are not
3 testifying based upon your knowledge of the Company's
4 past history with respect to the amount of gas that
5 it cycles on an annual basis?

6 A That's correct. I'm testifying here based
7 upon the consistency between what the Company is
8 offering to the transportation customers versus how
9 that charge should be determined.

10 Q Have you reviewed a copy of -- I believe
11 what has been previously admitted into the record as
12 IIEC Exhibit 3.0, the Company's response to a data
13 request No. 4.09?

14 A I don't know.

15 Q If I showed you a copy of that, would that
16 refresh your recollection?

17 A It might help. I have that.

18 Q And, Mr. Harms, is it correct that on IIEC
19 Exhibit 3.0, the actual amount of gas cycled during a
20 12-month injection withdrawal period for the Company
21 exceeded the 120 BCF that is being proposed in this
22 case basically from the period depicted there, I

1 believe, 1995 through 2004?

2 A Could you restate the question, please?

3 Q Sure. The information shown on IIEC
4 Exhibit 3.0 shows that the amount of BCF cycled on an
5 annual basis for the period 1995 through 2004 shows a
6 figure greater than the 120 BCF that's being proposed
7 in this case?

8 A What this document shows is the
9 coincidental maximum top gas and the coincidental
10 minimal top gas. The difference between those two in
11 1995 was approximately 107 BCF, 114 BCF in '96, 119
12 BCF in '97. Am I looking at the right document?

13 Q Yes.

14 A I don't see where it's cycled more than 120
15 unless you can point me to a specific year that I'm
16 missing.

17 MR. FEIN: Yep. May I have a moment, your
18 Honor?

19 JUDGE BRODSKY: That's fine.

20 BY MR. FEIN:

21 Q Let me ask you another question, Mr. Harms.
22 At Lines 818 to 820 of your rebuttal testimony you

1 state that Dr. Rosenberg's proposal would produce an
2 under recovery of storage costs from transportation
3 customers because their storage capacity available is
4 both based and priced on 120 BCF; do you see that?

5 A Yes, I do.

6 Q And when you reference base and priced on
7 120 BCF, am I correct that you're referring to the
8 Company's proposal in this proceeding and not the
9 current SBS provisions?

10 A The current SBS provisions were established
11 in the '95, '96 rate case. The pricing here is based
12 upon what is proposed in this case.

13 Q And the under recovery that you referenced
14 here, would you agree that that would not occur if
15 the adjustment proposed by Dr. Rosenberg were
16 approved by the Commission?

17 A Could you restate that question, please?

18 Q Sure. At these lines of your testimony you
19 refer -- you state that Dr. Rosenberg's proposal
20 would automatically insure an under recovery. If the
21 additional adjustments that are proposed by
22 Dr. Rosenberg were approved by the Commission, you

1 would not be suggesting that the Company would under
2 recover; is that correct?

3 A My line here states, The under recovery of
4 storage costs from transportation customers, I'm
5 assuming to whatever portion the transportation
6 customers were able to avoid, that would be passed
7 onto some other rate class. And, so, in total, the
8 revenue recovery that the Company would get would be
9 the same, it's simply a matter of who pays for it.

10 Q In the storage capacity that's available to
11 transportation customers under SBS is currently 26
12 times the customer's MDCQ; is that correct?

13 A That is correct.

14 Q And the 26 times MDCQ is not based and
15 priced on 120 BCF; is that correct?

16 A That was based upon pricing in the last
17 case.

18 Q I'd like to better understand the Company's
19 proposal for cycling through storage that you discuss
20 here in your testimony and I want to get a better
21 understanding of what might occur to that proposal
22 regarding a hypothetical, so I'm going to ask you a

1 couple examples if you could to help me walk through,
2 to see that I understand this.

3 Now, you would agree that in the
4 winter season, storage is drawn down by some amount,
5 some figure under the Company's proposal; is that
6 correct?

7 A The Company operates storage such as it
8 withdraws during the winter heating season, correct.

9 Q And I want to specifically understand what
10 the Company would consider a storage withdrawal under
11 the proposals here, so let me walk through a little
12 example. If, on November 1st, in storage there was
13 200 BCF and then on March 31st, there was 100 BCF,
14 how much gas would be in the storage -- how much gas
15 would have been cycled during that period of time?

16 A It depends on the physical activity that
17 occurs between that time with injections and
18 withdrawals.

19 Q Meaning, if there's additional injections
20 between that time period?

21 A Yes.

22 Q Let's assume there were no other injections

1 after November 1st in that hypothetical.

2 A The Company would have withdrawn 100 BCF.

3 Q And, similarly, if on November 1st there
4 was 200 BCF in storage and that between November 1st
5 and March 31st, the 15 -- the 50 BCF was injected
6 into storage on March 31st, what would be the amount
7 of storage withdrawn in that example? Let me restate
8 that. That wasn't clear.

9 The second example would be: On
10 November 1st there's 200 BCF in storage. Storage is
11 injected between November 1st and January 31st, for
12 example, an additional 50 BCF. Then on March 31st,
13 100 BCF is withdrawn, what would be the total amount
14 of storage withdrawn in that example?

15 A I'm sorry, I didn't follow it. Could you
16 give it to me one more time?

17 Q Sure. November 1st, there's 200 BCF in
18 storage. Between November 1 and January 31, an
19 additional 50 BCF is injected into storage.

20 A So we're up to 250?

21 Q Correct. And then on March 31st, 100 BCF
22 is withdrawn.

1 A And so we're now at 150?

2 Q That's my question to you. Would that be a
3 correct calculation of what is remaining in storage
4 on March 31st, 150 BCF under that example?

5 A Given all other things equal, yes.

6 Q During last Friday's testimony -- and I
7 believe you were present -- Mr. Bartlett was asked if
8 he knew if transporter storage was fully subscribed
9 in the years 2004 and 2005. Do you remember that
10 testimony, that question?

11 A I remember something about storage for
12 2005.

13 Q And he was asked specifically: Did
14 transporters receive the full amount of storage that
15 they requested? And Mr. Bartlett indicated that he
16 was unsure but believed it was not fully subscribed
17 but was unable to say who or what other witness of
18 the Company might be able to answer that question.
19 Do you know the answer to that question?

20 A I know the answer for 2005.

21 Q And what would that answer be?

22 A It is fully subscribed.

1 MR. FEIN: At this point, can I ask an
2 on-the-record data request for the answer to that
3 question and I'll rephrase it for the record for
4 2004, which would be: Was transporter storage fully
5 subscribed in the year 2004 and 2005? And if so,
6 please provide a detailed answer depicting the
7 volumes that have been subscribed for those years.

8 JUDGE BRODSKY: Very well.

9 BY MR. FEIN:

10 Q Let me ask you just one follow-up question
11 on that line. If you assume that transporters did
12 not receive all of their storage requests indicating
13 this transportation storage was fully subscribed, in
14 that event, could the Company allocate a portion of
15 the storage to the hub?

16 A I believe Mr. Bartlett's testimony
17 addressed that in that you could allocate what was
18 anticipated to be unused.

19 Q If you could please now turn to your
20 Exhibit 27 B, as in boy, Lines 328 and 329. And let
21 me know when you're there.

22 A 27 B, what page, please?

1 Q It will be Page 15 on Lines 328 and 329.

2 A Yes, I have that.

3 Q And there you state that expanding groups
4 to larger than 50 accounts would increase the
5 potential billing errors for the group, increase
6 administrative costs and potentially result in more
7 confusion. Do you see that reference in your
8 testimony?

9 A I do.

10 Q Now, you have not submitted, as part of
11 your testimony in this case, any study or analysis to
12 support that statement that appears on those lines;
13 is that correct?

14 A The only study that I have submitted is the
15 support of the account charge based upon the current
16 50 accounts.

17 Q Right. But again, just so the record is
18 clear, you have not submitted any formal study or
19 analysis to support your statement that expanding the
20 group would increase the potential of billing errors;
21 for example?

22 A Well, I think it's logical, but, no, I have

1 not performed any study --

2 MR. FEIN: Move to strike the answer as
3 nonresponsive. It's a simple yes/no answer to
4 whether you provided a study or an analysis to
5 support the witness' assertion in testimony.

6 JUDGE BRODSKY: Please answer the question yes
7 or no.

8 THE WITNESS: No.

9 BY MR. FEIN:

10 Q Similarly, Mr. Harms, you have not provided
11 to the Commission any formal study or analysis to
12 support your assertion that expanding the group to
13 larger than 50 accounts would result in more
14 confusion; is that correct?

15 A I have performed no study.

16 Q Now, at Line 320 on this same page of your
17 testimony you indicate that the Company bills all
18 customers within a group at the same time. Do you
19 see that reference at the top of the page?

20 A Line 320?

21 Q Yes.

22 A Yes, I do.

1 Q And in referring back to -- below, I should
2 say, at Lines 327 and 328, you conclude that groups
3 larger than 50 accounts, again, would increase the
4 potential of billing errors to the group. Now,
5 wouldn't you agree that if a group was allowed to
6 have more than 50 accounts, the total number of
7 groups administrated by the Company would decrease?

8 A Assuming that the total amount of customers
9 stayed the same and the total number of groups would
10 not change because of that -- I'm sorry, that certain
11 other groups wouldn't be split into something
12 smaller, assuming everything else equal, then, yes,
13 it would.

14 Q And assuming everything else equal with
15 fewer groups for Nicor to administer, wouldn't you
16 agree that that would reduce the potential for
17 billing errors?

18 A No.

19 Q Now, if you could turn to your surrebuttal
20 testimony, Lines 904 and 905, let me know when you're
21 there.

22 A I have that.

1 Q You indicate there that there is -- and I
2 quote, Considerable work and expense that the Company
3 incurs to provide this service and then the sentence
4 goes on. There you're referring to Rider 13 and
5 service; is that correct?

6 A Servicing groups under Rider 13.

7 Q Can I assume the Company charges customers
8 for Rider 13 service?

9 A Yes. Based upon 50 customers per pool.

10 Q And is it your testimony that the Company's
11 cost would not be reduced if there are fewer number
12 of groups to administer through Rider 13?

13 A Some costs would be reduced and some would
14 increase.

15 Q And specifically with respect to
16 Constellation New Energy Witness Oroni's
17 recommendation, you have not provided any specific
18 cost study or analysis that you've submitted in this
19 proceeding, have you?

20 A I have submitted a cost analysis.

21 Q But not specifically based upon Mr. Oroni's
22 testimony; is that correct?

1 A Not based upon changing from a 50 customer
2 per pool.

3 Q At the bottom of Page 40 of your
4 surrebuttal testimony and carrying over to Page 41
5 you indicate that in your opinion, Most billing
6 errors are caused by mechanical or telephone line
7 malfunctions that are beyond the Company's control.
8 Do you see that?

9 A Yes, I do.

10 Q Is that testimony based upon your years of
11 experience with the Company?

12 A Many years of experience.

13 Q Specifically, you have not provided any
14 sort of study or analysis regarding this opinion
15 testimony you provide here; is that correct?

16 A I have not provided any analysis other than
17 to review that the -- that the customers in these
18 groups are daily metered customers, which use
19 mechanical, electrical and telephone lines.

20 Q And as part of your testimony here, you
21 have not provided the Commission with any specific
22 study or analysis that eliminated any cap of

1 50 accounts would increase billing error delays that
2 mechanically, electrically or telephonically are
3 going to occur as a result of Mr. Oroni's proposal in
4 this case; is that correct?

5 A Other than here indicating that increasing
6 the size will increase the delays because you have
7 more accounts to deal with.

8 Q But, again, you've provided the Commission
9 with no study or analysis of how that would impact
10 Nicor specifically, this is just your opinion here,
11 there's no study or formal analysis of the additional
12 lines and any other mechanical or electrical needs
13 that would occur as a result of this proposal; is
14 that correct?

15 A That is based on my experience and Company
16 knowledge.

17 Q Now, at Lines 916 through 924, you address
18 CNE Witness Oroni's proposal for so-called super
19 groups; is that correct?

20 A Yes.

21 Q And do you understand that the concept of a
22 super group is that each of the individual groups

1 within the same super group must be under common
2 management?

3 A Yes, I do.

4 Q And that is managed by the same supplier?

5 A Yes, I do.

6 Q And you understand that Mr. Oroni is not
7 proposing that the balancing of groups would not
8 occur between groups managed by different suppliers?

9 A I believe that Mr. Oroni's proposal is that
10 you would take all of the groups under one supplier
11 and balance at that level.

12 Q You would agree, would you not, that the
13 incentives that exist to suppliers for balancing
14 individual groups would likewise apply to a supplier
15 managing more than one group under a super pool?

16 A Could you say that again?

17 Q Sure. You would agree, would you not, that
18 the incentives that exist to require suppliers the to
19 balance individual groups would also apply to a
20 supplier in managing more than one group under a
21 super pool?

22 A If I understand your question correctly, if

1 the incentive remains at 90 percent full and 10
2 percent full based upon the heating season,
3 90 percent at the beginning and 10 percent at the end
4 or less, if those were applied to super groups, then
5 the incentive's the same.

6 Q Would it be fair to say that the Company
7 opposes super pools because balancing for individual
8 groups will cause suppliers to err on the side of
9 surpassing the Company's thresholds rather than just
10 meeting them?

11 A I think the Company's proposal is -- of the
12 90 percent and the 10 percent is based on the
13 existing group structure that we have. I believe
14 Mr. Bartlett testified the Company's preference is to
15 have 100 percent and zero. To the extent that we are
16 going to blend groups into super groups, I would
17 suspect Mr. Bartlett would want a higher target under
18 those scenarios.

19 Q Would you agree that it's easier to manage
20 a single, large group of customers to a target than
21 each and every individual customer to a target?

22 A Yes. And I believe that's why Mr. Bartlett

1 would then propose something higher to what the
2 Company really would like, 100 percent and zero
3 percent.

4 Q Then wouldn't you agree that super pooling
5 would aid in increasing the odds that a supplier
6 would shoot for a target beyond the stated target
7 level in order to avoid a penalty?

8 A What's the target level.

9 Q Something higher than 90 percent.

10 A I'm not certain which total would be
11 better.

12 Q Are you familiar with Natural Gas Pipeline
13 Company's DSS tariffs?

14 A Just in the most general sense.

15 Q Are you familiar or would you accept
16 subject to check that NGPL's DSS storage tariffs
17 allow a supplier to hit the fall target level on any
18 one day between October 15th and November 15th?

19 A I'll accept it sub to check.

20 Q At Lines 925 through 944, basically, of
21 your surrebuttal testimony you address Constellation
22 New Energy Witness Oroni's proposal to allow a

1 transportation customer to sell gas and storage to
2 other transportation customers. Do you see that
3 portion of your testimony?

4 A Yes, I do.

5 Q And do you understand that proposal to mean
6 selling gas from the transportation customer's
7 storage account, in other words, transferring storage
8 gas that's already assigned to that particular
9 customer?

10 A I understand Mr. Oroni's proposal to be the
11 gas and storage for a particular transportation
12 customer could be transferred to the storage of
13 another transportation customer and assigned in that
14 manner.

15 Q And do you agree that this proposal could
16 facilitate the ability of customers to comply with
17 the Company's goals to cycle storage?

18 A It helps customers comply but it does not
19 help meet the Company's goals.

20 Q So it would help customers but not the
21 Company; is that --

22 A It would not help --

1 Q -- a summation of the opposition to that
2 recommendation?

3 A Oh, no. I lay out in here my other issues
4 that I have with it.

5 Q So you don't believe it would help the
6 Company at all in meeting those proposed target
7 levels?

8 A That's correct.

9 Q And I believe you indicated Lines 939 and
10 940 that -- strike that.

11 Isn't it correct, Mr. Harms, that the
12 Company was presented with the same proposal or
13 reviewed the same proposal during the last rate case?

14 A I believe there was a similar proposal to
15 sell storage among customers in the last rate case.

16 Q And in that last rate case, was the Company
17 proposing cycle requirements for customers and
18 related target levels to companies for noncompliance?

19 A Noncompliance with certain target levels.
20 There were no target levels other than they had to
21 stay within the storage capacity that they selected.

22 Q And would you agree that providing

1 transportation customers greater flexibility and
2 reducing gas in storage, it would provide these
3 customers with the necessary tool or a helpful tool
4 for compliance with the Company's proposal?

5 A Selling storage, again, would help the
6 customer. It does not help achieve the Company's
7 goals.

8 MR. FEIN: Could I ask the last portion of the
9 answer be stricken? I didn't ask about the Company's
10 goals. I asked about the customers meeting their
11 proposed targets in this case. It wasn't -- the
12 Company's goals didn't appear in my question. He
13 tried to answer that two or three times here.

14 JUDGE ARIDAS: Could we have the question read
15 back?

16 (Record read as requested.)

17 JUDGE ARIDAS: Overruled.

18 BY MR. FEIN:

19 Q Mr. Harms, would you agree that in light of
20 the cycling requirements and target levels proposed
21 in this proceeding by the Company, that the value of
22 a customer's storage account suffers an overall

1 decrease?

2 A I'm not sure I would agree with that.

3 Q Now, isn't it correct that under the
4 Company's current tariff, a transportation customer
5 can sell gas withdrawn from the customer's storage
6 account to another end user within the customer's
7 group?

8 A Can you refer me to a specific tariff? I'm
9 unaware of that.

10 Q You're unaware of that, okay.

11 And at Lines 937 and 38 where you
12 reference or you assert that Mr. Oroni's proposal
13 would result in increased cost, again, as part of
14 your surrebuttal testimony here, you did not provide
15 the Company with -- strike that.

16 You did not provide the Commission
17 with any formal study or analysis of the specific
18 increase costs that would occur; is that correct?

19 A That is correct.

20 Q And would you also agree that nowhere in
21 Mr. Oroni's testimony does he suggest that
22 transportation customers should not pay for such a

1 service if the Company were to offer it?

2 A I'm not certain if he addresses it in his
3 testimony as I sit here.

4 Q Is it correct that the Company allows a
5 supplier to transfer storage volumes when a customer
6 changes from that supplier to another supplier?

7 A When a customer moves from a group that is
8 controlled by one supplier to a group that is
9 controlled by another supplier, that initial supplier
10 can designate, if they so desire, an amount of gas to
11 be transferred with that Company to the other group.

12 Q And isn't it also correct that the Company
13 currently allows transporters to sell excess storage
14 volumes when facing a penalty situation at month's
15 end?

16 A The Company's current transportation
17 tariffs -- and are consistent with those proposed in
18 this case -- allow for a daily reg transportation
19 customer to sell storage that they are in excess of
20 their storage balancing service once they have been
21 assessed that penalty.

22 Q And in order to take advantage of that

1 service, those customers need a certain type of
2 metering, I assume?

3 A I would have to review the tariffs but I
4 believe it applies to the daily reg transportation
5 customers.

6 Q So if you are a daily reg transportation
7 customer, you presumably have the Company -- the
8 Company has the technology in place to allow that
9 customer to sell excess storage at month's end?

10 A I wouldn't say that we have the technology
11 in place. It's a realization of the fact that a
12 daily reg customer, if you're in excess storage at
13 month end, you could be assessed a penalty in two
14 months. As a way to limit that, the Company does an
15 administrative adjustment to make sure that that
16 second month does not happen.

17 Q And isn't it correct that with regard --
18 strike that.

19 Isn't it correct that any costs
20 incurred by the Company that allows a supplier to
21 transfer such storage balances is currently recovered
22 through base rates?

1 A The Company has a separate charge for that.

2 Q And that's a line item charge that would
3 appear on a customer bill?

4 A Yes, it would.

5 MR. FEIN: No further questions.

6 JUDGE BRODSKY: Are you ready to proceed next?
7 You may.

8 MS. DOSS: Your Honor, Cook County had a few
9 questions. I don't know if you wanted -- about 10 or
10 15 minutes.

11 MR. MOORE: I have a half-hour.

12 JUDGE BRODSKY: Let's proceed with Dominion,
13 then, and try to keep this relatively organized.

14 CROSS-EXAMINATION

15 BY

16 MR. MOORE:

17 Q Good morning, Mr. Harms. Stephen Moore
18 with Dominion Retail.

19 A Good morning.

20 Q If I could call your attention to your
21 surrebuttal testimony, Page 36, Line 815. You
22 indicate there that Nicor only uses the account

1 number and the meter number to verify the customer is
2 authorized to switch to Customer Select; is that
3 correct?

4 A From sales to Customer Select, that is
5 correct.

6 Q And you indicate on Line 818 that it is not
7 practical to use a customer name or address because
8 of misspellings, spouse name, punctuation differences
9 that could lead to a rejection; is that correct?

10 A That's correct.

11 Q Now, are these spouse names, punctuation
12 differences -- put it this way: Is the customer name
13 and address in the database?

14 A We have a customer name and address in our
15 database.

16 Q Now, do you happen to know what kind of
17 fields does that have? Does it have a field for the
18 first name, middle initial, last name?

19 A I don't know that.

20 Q And do you know if it would be possible to
21 use just the last name to verify that when a customer
22 account comes in, that it is a proper request?

1 A Again, with the misspellings and et cetera,
2 I would assume not; but I can't say that it would be.

3 Q Mr. Crist had recommended in his testimony
4 that Nicor provide the Customer Select providers with
5 a customer list. Do you know if the provision of
6 such a list would give Customer Select providers the
7 same database that Nicor has in terms of correct
8 spellings, spouse names, et cetera, that you use to
9 verify Customer Select sign ups?

10 A If the Company were required to give that
11 customer list out, I would expect that it could be
12 given in a format that would match what we have on
13 our billing system.

14 Q Now, it's my understanding that the current
15 sign up procedure of Customer Select requires the
16 supplier to submit name, address, telephone number,
17 contact person, Nicor Gas account number, the meter
18 number and, perhaps, even the tax identification
19 number or a Social Security number. Those are asked
20 or optional; is that correct?

21 A I believe that's what the tariff says.

22 Q Now, would you agree that most customers

1 would need to obtain the account number and the meter
2 number off of their bill and/or meter, they don't
3 have it off the top of their head?

4 A The account number and meter number both
5 appear on their bill.

6 Q Now, is the account number a public number?
7 Can you get that without having a bill? Is that
8 publicly available?

9 A No, it is not.

10 Q So would it be safe to say that if a
11 Customer Select supplier provided Nicor with an
12 application containing the customer's name, address,
13 phone number and the Nicor Gas account number, they
14 would have had to have obtained that from the
15 customer; correct?

16 A Again, if we are assuming that the only
17 thing that Nicor Gas would check is the account
18 number, that may not be necessarily so.

19 Q But if the account number is not publicly
20 available, how else would they get it other than the
21 customer?

22 A Well, the account number -- there is a

1 sequence to the account numbers and given that a
2 supplier would have a customer with a given account
3 number and that customer would move and a new one
4 would replace that customer, you could deduce what
5 the next account number would be.

6 Q I'm sorry, you said there was a sequence,
7 you mean by a residential address or just by when
8 someone moves out of a place, the next one is going
9 to have a sequential number?

10 A A very close number.

11 Q So it's only when a customer moves that the
12 next customer will have a similar number?

13 A Correct.

14 Q But other than that, a Customer Select
15 provider is not going to be able to figure out
16 walking down a street what a customer's number would
17 be?

18 A Walking down a street, that would be a true
19 statement.

20 Q Now, Nicor has -- let me back up a second.
21 If a Customer Select provider provides Nicor with a
22 customer for sign up, when, in fact, that customer

1 did not want to be signed up for Customer Select,
2 that would be slamming, is that a term used in this
3 industry?

4 A That's a term used in the choice industry.

5 Q And does Nicor have penalties for slamming?

6 A I don't believe so.

7 Q Does the Illinois Commerce Commission have
8 any penalties for slamming?

9 A I don't know that.

10 Q Does Nicor have any procedures for
11 identifying slamming?

12 A To date, the only procedure we have is when
13 a customer calls and complains and they say they did
14 not sign up with that supplier. We contact the
15 supplier and ask for verification and quite often, we
16 find that the suppliers are correct.

17 Q That there was a sign up?

18 A There was a sign up.

19 Q Do you have any idea what kind of numbers
20 you have per year from slamming? How many customers
21 have -- the supplier was not able to verify that
22 there was a sign up?

1 A Customers -- I'm sorry, suppliers have
2 always been able to give us a verification.

3 Q So zero?

4 A Under the current process, that is correct.

5 MR. MOORE: May I approach the witness?

6 JUDGE BRODSKY: You may.

7 (Whereupon, DRI
8 Exhibit No. 3 was
9 marked for identification
10 as of this date.)

11 BY MR. MOORE:

12 Q Mr. Harms, I've presented to you what's
13 been marked for identification as DRI Exhibit 3 and
14 this is a copy of DRI data request 4.12 discussing
15 customer complaint data dated -- attached to this,
16 the exhibit provides data for 2004 showing invalid
17 Customer Select enrollments due to incorrect account
18 number or incorrect meter number; is that correct?

19 A Yes, it is.

20 Q Now, it's my understanding that the second
21 column of numbers on Page 2 of this exhibit show the
22 invalid meter numbers that only occurred when there

1 was a valid account number; is that correct?

2 A That is correct.

3 Q And, so, the total of the 2004 -- there
4 were 2,423 customers who gave, I assume, correct
5 address, phone number, name and a valid account
6 number, but they were rejected because they didn't
7 have the correct meter number; is that correct?

8 A I don't know about all the other factors
9 they may have submitted, but they did have a valid
10 account number.

11 Q But they were rejected because of an
12 invalid meter number; correct?

13 A That is correct.

14 Q Now, again, still with your surrebuttal
15 testimony, Page 37, Line 826 you indicate that 2,400
16 customers are rejected in 2004 for having incorrect
17 meter numbers after passing the test for account
18 number and then you said that's 2,400 potential
19 complaints that were prevented. What would the
20 nature of the complaint be?

21 A The nature of the complaint could have been
22 that they were not -- they were not solicited and

1 didn't want to sign up for Customer Select.

2 Q But the provider already gave to Nicor the
3 customer account number which is not publicly
4 available and gave them the correct, we hope, the one
5 that we think, the phone number address and name, so
6 the only reason they were rejected was the account
7 number, correct -- meter number, I'm sorry, according
8 to Exhibit 3?

9 A Again, we do not check the name, the phone
10 number, all of the address, et cetera. The only
11 thing that we look at on the file is a match with the
12 account number and it is possible to submit an
13 account number by chance that would match. And so,
14 the second thing that we check is the meter number
15 and there were 2,400 customers where a correct
16 account number or a valid account number was
17 submitted but an invalid meter number to go with that
18 account.

19 Q And you indicated earlier that in all of
20 the checking Nicor has done, there has not been a
21 single incident so far of slamming?

22 A That's my opinion.

1 Q On Page 33 of your surrebuttal testimony,
2 Line 738 you indicated, That the existing
3 administrative charges for Customer Select were based
4 on a forecast of 500,000 Customer Select customers by
5 2005; is that correct?

6 A Yes.

7 Q Do you know how that number was forecasted?
8 What the methodology was?

9 A I believe the methodology was laid out in
10 that case. I don't have that with me.

11 Q And currently, there are only 2000 --
12 230,000 Customer Select customers; is that correct?

13 A Which have forecasted approximately 230,000
14 at the end of the test year.

15 Q I'd like to call your attention to
16 Exhibit 17.7, the annual bill comparison for Rate 16.

17 A I have that.

18 Q The second set of numbers, base rates and
19 gas supply costs, what's the source of the gas supply
20 costs shown there? Is that a forecasted number?

21 A If you're referring to the section there
22 beginning with Line 14 through 28 --

1 Q Yes.

2 A -- that would be -- proposed is based upon
3 the test year estimate.

4 Q Do you know how those gas supply costs
5 compare with historic gas supply costs? Do you know
6 what the trend has been the last few years?

7 MR. RATNASWAMY: I'm going to object to the
8 compound question.

9 MR. MOORE: That's fine. I'll skip the first
10 question.

11 BY MR. MOORE:

12 Q Do you know what -- the second question --
13 do you know what the trend has been in terms of gas
14 costs over the past few years?

15 A Beginning with what year?

16 Q We'll say since 2000.

17 A My recollection is the 2000 was fairly
18 expensive and then it dipped and then it's back up
19 the last couple of years.

20 Q Has 2004 been greater than 2003?

21 A I don't know that.

22 Q Now, Line 13 of this exhibit shows therm

1 use for residential customers of 1,186. Is that the
2 Company's estimate of an average residential
3 customer?

4 A This is for an average space heat customer,
5 residential space heat.

6 Q Now, going down to Line 13, the current
7 base rate for the average residential customer then
8 would be \$175.47; is that correct?

9 A Correct.

10 Q And then going down the Line 28, the gas
11 supply cost for that customer would be \$748.96; is
12 that correct?

13 A Based upon the forecast, yes.

14 Q Now, the Company has proposed to remove
15 the -- it has a proposal for uncollectibles, it takes
16 away from Customer Select customer's responsibility
17 for the collectibles of the sales customers; is that
18 correct?

19 A For the commodity portion relating to gas
20 supply cost.

21 Q Now, would the commodity portion be
22 equivalent to the gas supply costs shown here on

1 Exhibit 17.7?

2 A I'm not sure I can answer that it's
3 directly equivalent. The uncollectible that is being
4 proposed is based upon gas costs but I'm not sure
5 it's the same forecast that we have here.

6 Q Putting aside the forecast of the gas cost
7 itself on a per therm basis, are there any other
8 charges besides -- assuming -- let me back up, strike
9 that.

10 Assuming that the cost of gas on a per
11 therm basis is the same, is the gas supply cost shown
12 here equivalent to the commodity cost that is
13 included in your proposal for the uncollectibles?

14 A I'm not sure I understand the question.

15 Q Are the charges the same? Are there any
16 other charges involved when you consider the
17 commodity costs of a customer's bill?

18 A If I understand correctly, if, for example,
19 we were to charge off this customer under our
20 proposal and we knew exactly what cost was for the
21 gas supply cost of the \$748, that would be the piece
22 that would get passed back through the Company's gas

1 supply cost charge.

2 Q The calculation of the 66.6 percent
3 allocation of the uncollectibles, how is that
4 determined?

5 A I believe that was discussed in
6 Mr. O'Connor's testimony.

7 Q Do you know?

8 A In general. There was a sample taken of
9 residential and nonresidential customers and a review
10 of each of those charged off accounts was made to
11 determine which was the gas supply cost and what was
12 other.

13 Q Do you know what period of time that study
14 was conducted over?

15 A I don't recall that.

16 Q Are you familiar with the aggregator
17 balancing service charge?

18 A Yes.

19 Q And the Customer Select balancing charge?

20 A Which is the equivalent, yes.

21 Q Now, these charges are designed to cover
22 the costs associated with upstream assets of pipeline

1 capacity and storage; is that correct?

2 A With a portion of it.

3 Q I'm sorry?

4 A With a portion of the upstream capacity.

5 Q And which portion would that be?

6 A The portion that the Company uses for

7 balancing services.

8 Q Now, is there any way to determine how much

9 a sales customer pays for these upstream assets and

10 how those costs are recovered from them?

11 A If that mathematical calculation can be

12 done.

13 Q Is that included in the noncommodity demand

14 charge for sales customer's portion of their bill?

15 A It's the noncommodity gas charge.

16 Q Would that be similar to the Customer

17 Select balancing charge?

18 A Well, that is a larger amount than the

19 Customer Select balancing charge.

20 Q But the cost that would be included in the

21 noncommodity gas charge would be similar to the costs

22 included in the Customer Select balancing charge?

1 A Yes. It's the same assets spread over the
2 same therms, yes.

3 MR. MOORE: May I approach the witness?

4 JUDGE BRODSKY: You may.

5 BY MR. MOORE:

6 Q I'd like to show you the binder entitled,
7 The Nicor Customer Select Supplier Information
8 Manual. Did you have a role in -- are you familiar
9 with this?

10 A I have seen it.

11 Q I'd like you to read the highlighted
12 portion there.

13 A I've read it.

14 Q Now, under the caption, Disadvantages of
15 Customer Select. Is it true that Nicor has informed
16 Customer Select providers and I quote, Under the
17 provisions of Customer Select, Nicor Gas informs its
18 supplier of how much gas to deliver to the system
19 each day for the entire group of customers, period.
20 The amount of gas delivered includes either a portion
21 of gas to be placed into Nicor Gas storage or
22 reflects a withdrawal of gas from Nicor Gas storage,

1 period. Under Customer Select, Nicor Gas, paren, not
2 the supplier, end paren, manages a storage that has
3 been allocated to the customer, period. It is to be
4 considered when determining whether to switch a
5 transportation customer to Customer Select. Is that
6 true? Is it true that Nicor Gas has put that into
7 their Customer Select information -- supplier manual?

8 MR. RATNASWAMY: I object on the grounds of
9 relevance. I don't think this has been shown to
10 relate to anything yet.

11 JUDGE BRODSKY: You want to respond?

12 MR. MOORE: Yes. Mr. Harms is familiar with
13 the Customer Select Manual. This actually goes
14 towards an issue that we had been pursuing involving
15 access to storage and Nicor is warning Customer
16 Select that we control your storage, not you. I
17 would just like to get that into the record. I
18 consider that disadvantage -- it's under the title,
19 Disadvantages of the Program.

20 JUDGE ARIDAS: The objection is overruled;
21 we'll allow the question.

22 BY MR. MOORE:

1 Q Is it true that Nicor has informed Customer
2 Select providers that that is a disadvantage of
3 Customer Select as in the paragraph that I read?

4 A I'm not sure that we've said -- it said
5 that it is disadvantage to Customer Select. It is a
6 disadvantage compared to the flexibility and freedom
7 they have of nominating for customers that are
8 traditional transportation customers. So there is a
9 change in the quality of service along with the
10 quantity of price.

11 Q Now, a sales customer pays Nicor for both
12 gas supply and delivery of the gas to their residents
13 or commercial business; is that correct?

14 A Most of them do.

15 Q And if the customer does not pay their
16 bill, the collection process eventually could result
17 in Nicor shutting off their gas meters; is that
18 correct?

19 A That's correct.

20 Q And that's after following various
21 procedures that the Illinois Commerce Commission has
22 set out?

1 A That's a given.

2 Q Now, when Nicor bills on behalf of a
3 Customer Select provider, it charges the select --
4 the supplier for that billing service; is that
5 correct?

6 A Yes.

7 Q And, so, the bill to the customer would be
8 for the delivery charges of Nicor and the gas charges
9 of their Customer Select provider; is that correct?

10 A The bill to the customer -- that we send to
11 the customer, is the bill for our portion of the
12 charges and then whatever the Customer Select
13 supplier has is his charges.

14 Q Now, that customer does not pay any parts
15 of the bill -- first let me ask you this: If the
16 customer pays part of the bill, who does Nicor pay
17 off first? Itself or the supplier?

18 A The tariff indicates that the order of
19 payment is the Company arrears, then the supplier
20 arrears, then the Company current and then the
21 supplier current.

22 Q Now, if a customer does not pay their bill

1 and the eventual collection process results in a
2 cutoff -- if the customer pays part of their bill and
3 the amount remaining is for their Customer Select
4 charges, the unpaid amount, Nicor would not cutoff
5 the meter for those charges, would it?

6 MR. RATNASWAMY: Your Honors, I'll object. I
7 believe this is beyond the scope of his five
8 testimonies.

9 MR. MOORE: This is directly towards the
10 surrebuttal testimony of -- proposal of Mr. Crist and
11 Nicor by the uncollectibles of Customer Select
12 providers.

13 JUDGE BRODSKY: We'll allow the question but
14 please get where you're going.

15 THE WITNESS: Could you please restate the
16 question?

17 (Record read as requested.)

18 THE WITNESS: I guess I don't understand the
19 question.

20 BY MR. MOORE:

21 Q Nicor cannot cutoff a meter for failure to
22 pay a Customer Select portion of the bill, can it; if

1 a customer has paid the Nicor portion?

2 A Well, practically speaking, because of the
3 manner in which the payments that the Company does
4 receive from the customer, it is difficult to say
5 there's going to be a large amount owed to the
6 supplier and nothing owed to Nicor Gas Utility
7 because of its Company arrears and its supplier
8 arrears. So once the Company has collected its and
9 the supplier has part of it, then we're on to the
10 current charges. But I think your point is, is:
11 Could the Company turn off a customer's gas for
12 simply an unpaid bill to a Customer Select supplier?
13 And the answer is, no.

14 Q And Customer Select providers don't have
15 the authority to cutoff meters for failure to pay
16 their bills, do they?

17 A That's my understanding.

18 Q Now, your surrebuttal testimony on Line 700
19 you discuss Dockets 00-0620 and 00-0621. Dominion
20 Retail was not active in Illinois at the time those
21 hearings took place, was it?

22 A I don't know that.

1 Q Well, are you familiar with how Dominion
2 Retail has acquired its customers in Illinois?

3 A I'm familiar with how Dominion Retail got
4 involved in our Customer Select Program but not in
5 the state of Illinois.

6 Q In the Nicor Program, Dominion Retail
7 purchased the customers of Nicor Energy; is that
8 correct?

9 A That's my understanding.

10 Q And do you know when that took place?

11 A 2002 and 2003.

12 Q And do you know when the hearings were held
13 in Dockets 00-0620 and 00-0621?

14 A I would guess the end of 2000 to the
15 beginning of 2001.

16 Q Do you happen to know if Nicor Energy
17 Services was an active participant in those dockets?

18 A They were a participant through, I believe,
19 a marketing association.

20 Q So is this the first Commission proceeding
21 that's taken place since Dominion Retail purchased
22 the Nicor Energy Services customers?

1 A Oh, no. We've had a number of other
2 proceedings, not necessarily related to tariffs; but
3 there's been a number of proceedings before the
4 Commission since that acquisition.

5 Q And these proceedings have adjusted the
6 rules for procedures for Customer Select?

7 A No.

8 Q Does Nicor do any mailings for any Nicor
9 Gas affiliates promoting their products and services?

10 MR. RATNASWAMY: I object on both relevance and
11 scope of testimony grounds.

12 JUDGE BRODSKY: Do you have a response?

13 MR. MOORE: I believe somewhere in his
14 testimony he addresses Mr. Crist's proposal that
15 Nicor include information about Customer Select in
16 some of their mailings.

17 JUDGE BRODSKY: Objection sustained.

18 MR. MOORE: That's all. Thank you.

19 JUDGE BRODSKY: All right. At this point,
20 we're going to take lunch. It's 12:15, so we're
21 going to go till, I guess, 1:30. We'll reconvene
22 with the cross-examination by the Retail Gas

1 Suppliers.

2 MR. KELTER: Your Honor, before we break for
3 lunch, can I make one quick request related to the
4 motion that Nicor filed? CUB would like to request
5 that you issue your ruling on their original motion
6 in limine.

7 JUDGE ARIDAS: Without you responding to the
8 new one or without us considering a new one?

9 MR. KELTER: Without us responding to the new
10 one and without you considering it.

11 JUDGE BRODSKY: What's your basis for
12 requesting that the second motion not be considered?

13 MR. KELTER: Well, for one thing, if you're
14 going to rule against us on the motion in the first
15 instance, then we don't want to spend additional
16 resources on the next motion which has related issues
17 and there's no chance we're going to win the second
18 one if we lost the first.

19 JUDGE BRODSKY: All right. What we're going to
20 do at this point is, we're going to review the second
21 motion and we're going to review the first motion and
22 see if there is a need for argument on the second

1 motion or whether there should be a decision on the
2 first motion and we will let you know the decision of
3 that after lunch.

4 MR. KELTER: I'm sorry, I must have been
5 confused. I thought this morning you said you had a
6 ruling on the first motion that you were ready to
7 make.

8 JUDGE ARIDAS: Correct.

9 JUDGE BRODSKY: But that notwithstanding, since
10 the second motion has been filed, we want to make
11 sure that we have a chance to review everything
12 that's pending.

13 MR. KAMINSKI: Your Honor, I'm sorry, Mark
14 Kaminski with the AG's Office. I just have a -- my
15 understanding of what was ruled on last week was that
16 you were going to determine today whether the Cook
17 County and CUB discovery responses provided by Friday
18 at 5:00 met the requirements of your original ruling
19 allowing Mr. Galligan to offer direct testimony in
20 this proceeding. That was what you were going to
21 rule on on the first motion; correct?

22 JUDGE BRODSKY: Well, that's inherently tied

1 into what's at issue. So there can be no final
2 disposition of the motion prior to such a
3 determination.

4 JUDGE ARIDAS: You seem confused still,
5 Mr. Kelter.

6 MR. KELTER: Well, I have read the second
7 motion. I think the second motion essentially makes
8 argument regarding whether -- what we submitted to
9 them and what we submitted to you on Friday is in
10 compliance with your ruling. And I just think
11 that -- my understanding was that you were going to
12 look at what we supplied to them and to yourselves on
13 Friday and judge -- based on your own analysis --
14 whether we were answering the data responses again.
15 I'd rather not have to -- I just want to win or lose
16 on that.

17 JUDGE ARIDAS: Okay. I can assure you we won't
18 waste your time but it would be -- it's incumbent
19 upon us to review what they filed this morning before
20 proceeding, so we'd like to take the lunch hour to do
21 that and if it doesn't change our opinion on our
22 original ruling, I can assure you, we won't waste

1 your time.

2 MR. KELTER: That second part was -- again, the
3 waste of time, the second one was a question of what
4 we perceive to be fairness but I understand what
5 you're saying and I respect your ruling.

6 JUDGE ARIDAS: Okay. Thank you.

7 MR. BORDERS: Your Honors, just a procedural
8 matter, William A. Borders on behalf of Retail Gas
9 Suppliers. Retail Gas Suppliers will not have any
10 cross for any Harms this afternoon.

11 JUDGE ARIDAS: Then we will return and when we
12 start with cross-examination, it will be Cook County
13 that is up.

14 MS. DOSS: We only have 10 or 15 minutes.

15 JUDGE BRODSKY: Okay. Very good. So we'll see
16 you all back here around -- just around 1:30.

17 (Whereupon, a luncheon
18 recess was taken to resume
19 at 1:30 p.m.)
20 (change of reporters.)

21

22

1 A F T E R N O O N S E S S I O N

2 JUDGE ARIDAS: Let's get back on the record.

3 Before we proceed with Mr. Harms, the
4 motion in limine -- Nicor's motion in limine has been
5 granted. That renders the supplemental filing this
6 morning moot. We're going to be issuing a written
7 ruling that's coming out on e-docket shortly.

8 And let's proceed with Mr. Harms'
9 cross.

10 CROSS-EXAMINATION

11 BY

12 MS. DOSS:

13 Q Good afternoon, Mr. Harms. Leijuana Doss
14 on behalf of Cook County State's Attorney's Office.

15 I have a few questions to ask you,
16 starting with your direct 12-B. Actually it's one of
17 your exhibits, 12-B.1, which is the schedule of
18 rates, Page 51.

19 A Yes, I have that.

20 Q Do you have that? Okay.

21 If you look at -- I'm referring to C,
22 which is general, and it talks about facilities will

1 not be provided hereunder for any uneconomic
2 extension, temporary business or business of doubtful
3 permanency.

4 For the purposes here the term
5 uneconomic shall mean any case where expected
6 revenues make it doubtful that a reasonable return
7 will be derived from the required investment.

8 Is that a correct reading of that?

9 A Yes, it is.

10 Q Now, would Nicor ever extend a main to
11 reach a customer who is expected to take gas service
12 on only one day out of the year?

13 A They could.

14 Q What -- under what circumstances? Under
15 what terms?

16 A It depends upon the revenue generated from
17 that customer in comparison to the investment and the
18 expenses that we expect.

19 Q Would there be a deposit required?

20 A Again, depending on the amount of revenue,
21 there may or may not be a deposit.

22 Q Would the customer have to pay for the

1 extension?

2 A No. Under this calculation here, we take
3 the investment of the extension, compare that along
4 with expenses and expected revenue in order to
5 calculate the deposit required from the customer.

6 And that's all that's required from
7 the customer would be a deposit.

8 Q Now, could you turn to your direct, but
9 this time Exhibit 17, and I want to refer you to
10 Page 9, Lines 189 through 90.

11 Do you have that?

12 A Yes, I do.

13 Q Okay. Now, here you state that marginal
14 cost pricing is superior to embedded cost pricing in
15 determining the proper price signals, correct?

16 A Yes.

17 Q Now, have you completed or reviewed any
18 studies on the benefits that Nicor customers might
19 receive from marginal cost based pricing?

20 A Other than the study performed by
21 Dr. Parmesano, no.

22 Q Based on that, I'd like to hand you I

1 believe what will be called is CCSAO/CUB Cross
2 Exhibit 8 and 9.

3 (Whereupon, CCSAO/CUB
4 Exhibit 9 was marked
5 for identification.)

6 JUDGE BRODSKY: Was there already a CUB 8 or
7 CUB/CCSAO 8?

8 MS. DOSS: From my understanding, Mr. Kelter
9 informed me that he started with -- he ended with 6
10 and 7. It was 5, 5.1, then Mr. Kelter had 6 and 7,
11 so I believe that was a correct numbering.

12 JUDGE BRODSKY: You know, I think CUB/CCSAO
13 8 may have been the documents submitted on CD.

14 MS. DOSS: Okay then.

15 JUDGE BRODSKY: We'll leave 9 as marked. Call
16 it 10.

17 MS. DOSS: There are two. You want them as a
18 group?

19 JUDGE BRODSKY: You can call it all 9, if
20 that's what you're trying to do.

21 MS. DOSS: We'll --

22 JUDGE BRODSKY: Whatever is easiest.

1 MS. DOSS: Group Exhibit 9 is fine.

2 JUDGE BRODSKY: All right.

3 BY MS. DOSS:

4 Q Now, Mr. Harms, Group Exhibit 9 consists of

5 two data requests and responses from 5.41 and 5 --

6 JUDGE BRODSKY: Let's go off the record for a

7 minute.

8 (Whereupon, a discussion

9 was had off the record.)

10 JUDGE BRODSKY: Let's go back on the record.

11 And you can proceed.

12 BY MS. DOSS:

13 Q All right. I guess I have to do this --

14 may I approach?

15 Looking at CCSAO/CUB 5.40 and

16 CCSAO/CUB 5.41, which is Group Exhibit 9, would you

17 please read that and the responses?

18 A You want me to read the question and then

19 the response?

20 Q You can read it to yourself.

21 A Okay. Yes, I have read it.

22 Q Okay. Now, and you're responsible for

1 these responses?

2 A Yes.

3 Q And would your answers still be the same
4 today?

5 A Yes.

6 Q No further questions. All right. One last
7 question.

8 Would you turn to your rebuttal,
9 Exhibit 32. And could you look at Lines 225 to
10 through 226, and that's Page 11 of 43.

11 A Yes, I have that.

12 Q Okay. Now, in that particular, you make
13 the statement that under the MDM methodology both
14 large customer and the smaller customers receive a
15 fair allocation of larger main costs. No further
16 adjustment to the MDM study needs to be made to
17 reflect any benefits.

18 Just for clarification, your use of
19 the term fair is based upon Nicor's position that
20 main costs are caused solely by peak day demand?

21 A I'm referring here to the benefits that
22 come from having one piece of main as opposed to two,

1 and regardless of what type of an allocation you
2 apply to the size of that main, the fact that there
3 are economies of scale associated with that larger
4 main cost -- or, I'm sorry, that larger main,
5 whatever that split is is the split, and that would
6 be fair.

7 Q So your answer is yes?

8 A No. I think my answer is I'm referring
9 here to the benefits applied equally to all customers
10 and is already reflected in the investment costs of
11 one piece of main rather than two.

12 MS. DOSS: All right. That's fine. No further
13 questions.

14 And we'll move for admission of
15 CCSAO/CUB Cross Group Exhibit 9.

16 JUDGE BRODSKY: Okay. Was there any objection
17 to it?

18 MR. RATNASWAMY: No, your Honor.

19 JUDGE BRODSKY: Okay. So then circulate copies
20 of the entire packet, I suppose, probably tomorrow.

21 MS. DOSS: No, your Honor, I should be able to
22 do that today. It will be 54.1 and 54.0 as Nicor's

1 response to CCSAO/CUB's data requests.

2 JUDGE BRODSKY: Okay. So you're going to file
3 on e-docket then?

4 MS. DOSS: No, your Honor. I'll tender it to
5 the court reporter immediately today.

6 JUDGE BRODSKY: All right. Okay.

7 MS. DOSS: I'm sorry for the confusion. I do
8 apologize.

9 JUDGE BRODSKY: That's okay. So those --
10 CUB/CCSAO Exhibit 9 -- Group Exhibit 9 will be
11 admitted upon filing.

12 MS. DOSS: Okay. Thank you, your Honor.

13 JUDGE BRODSKY: All right.

14 (Whereupon, CUB/CCSAO

15 Exhibit No. 9 was admitted

16 into evidence.)

17 CROSS-EXAMINATION

18 BY

19 MR. FEELEY:

20 Q Good afternoon, Mr. Harms. My name is John
21 Feeley, one of the staff counsel representing staff.

22 I have a few questions for you and

1 then Mr. Reichart to my right will also have some
2 questions for you.

3 I'd like to direct your attention to
4 your Exhibit 44 and particular Pages 14 and 15.

5 A Yes.

6 Q At Lines 309 and 310 you ask a question to
7 yourself concerning Ms. Pugh's proposal that Nicor
8 Gas reflect the cost of its 2 percent withdrawal
9 adjustment factor as a storage expense rather than a
10 gas cost.

11 Do you see that there?

12 A Yes, I do.

13 Q And then you go on later at Line 320 and
14 321 and you make reference to response to a data
15 request LAP 11.03?

16 A I see that.

17 MR. FEELEY: I'm going to have the court
18 reporter mark for identification as Staff Exhibit 23,
19 which is Staff Cross Exhibit Harms, it's a company's
20 response to LAP 11.03.

21

22

1 (Whereupon, Staff
2 Exhibit No. 23 was marked
3 for identification.)
4 BY MR. FEELEY:
5 Q Do you have that response in front of you?
6 A Yes, I do.
7 Q And is that Nicor Gas's response to LAP
8 11.03?
9 A Yes, it is.
10 Q And there's an Exhibit 1 which also was
11 part of that response attached to the narrative
12 response, correct?
13 A That is correct.
14 MR. FEELEY: At this time, your Honor, I'd move
15 to admit into evidence ICC Staff Exhibit 23, Staff
16 Cross Exhibit Harms. It's the company's response to
17 Staff Data Request LAP 11.03 and attached to
18 Exhibit 1.
19 JUDGE BRODSKY: Any objection?
20 MR. RATNASWAMY: No, sir.
21 JUDGE BRODSKY: Then Staff Exhibit 23 is
22 admitted.

1 (Whereupon, Staff
2 Exhibit No. 23 was admitted
3 into evidence.)
4 BY MR. FEELEY:
5 Q Mr. Harms, my next series of questions are
6 dealing with your Exhibit 12-B.2 and 27-B.5.
7 MR. RATNASWAMY: I'm sorry, can you repeat
8 that?
9 MR. FEELEY: Nicor -- hold on. Exhibit 27-B.5,
10 I'll be referring to that document, and the other one
11 is 12.2. I'm sorry.
12 MR. RATNASWAMY: Thank you.
13 BY MR. FEELEY:
14 Q Do you have those?
15 A I have the 27-B.5. And what was the other
16 reference?
17 Q 12-B.2 and it's --
18 A Is there a page number?
19 Q It's Rider 12. It's 88, 89 and 90.
20 A I have that.
21 Q Okay. All right.
22 Now, in your testimony, your

1 surrebuttal testimony, Exhibit 44.0 at Page 40, you
2 state that in that rider recovery is permitted for
3 incremental costs which is a more inclusive term than
4 the term environmental activities from Nicor Gas
5 current Rider 12.

6 Do you see that?

7 A Yes, I do.

8 Q And you're referring to Illinois Power's
9 Company -- Illinois Power Company's Rider GEA which
10 is Nicor Exhibit 27-B.5, correct?

11 A Yes, I am.

12 Q Is it your testimony that Nicor Gas is not
13 allowed to recover incremental costs currently under
14 its Rider 12?

15 A The incremental costs that are listed
16 there, the company is permitted to recover.

17 Q So Nicor Gas is recovering incremental
18 costs, correct?

19 A As defined in our tariff.

20 Q Refer to your Exhibit 12-B.2.

21 That exhibit reflects the changes you
22 are proposing to Nicor's current Rider 12, correct?

1 A Yes, it is.

2 Q If you could look at Page 88.

3 Do you have that?

4 A Yes, I do.

5 Q And the second paragraph of 88, could you
6 please read the first sentence where it starts out
7 costs recoverable?

8 A Costs recoverable through the environmental
9 cost recovery rider shall include all incremental
10 costs incurred by the company in connection with
11 environmental activities as defined below.

12 Q Thank you.

13 You're not proposing any changes to
14 that sentence, correct?

15 A That's correct.

16 Q If you look at the third paragraph on 12.2,
17 Page 88. Do you have that in front of you?

18 A Yes.

19 Q And see the -- in the second line of that
20 third paragraph environmental activities?

21 A Yes.

22 Q Could you read that sentence as it

1 currently exists in Nicor's Rider 12.

2 A As it currently exists or as we have
3 proposed here?

4 Q As -- the definition of the term
5 environmental activities as you propose there.

6 A As used in this rider, the term filing
7 month shall mean the month in which a charge is
8 determined by the company and filed with the
9 Commission.

10 The term environmental activity shall
11 mean manufactured gas operations, the investigation,
12 sampling, monitoring, testing, removal, disposal,
13 storage, remediation, or other treatment of residues
14 associated with manufactured gas operations or with
15 the dismantling of facilities utilized in
16 manufactured gas operations or with other operations
17 that generated substances subject to federal, state
18 or local environmental laws conducted at locations
19 where manufactured gas operations or the dismantling
20 of facilities utilized in manufactured gas operations
21 were at any time conducted.

22 The term manufactured gas operations

1 shall mean all operations relating to the manufacture
2 of gas, the storage, treatment, transportation, and
3 disposal of residues and the storage of manufactured
4 gas.

5 The term residues shall mean and
6 include any hazardous substance, raw materials,
7 byproduct, waste product and other residue.

8 Q And the proposal by Nicor in this
9 proceeding is to insert the phrase manufactured gas
10 operations immediately following after shall mean
11 with reference to environmental activities, correct?

12 A Yes. We are wanting to include
13 manufactured gas operations in the term environmental
14 activities.

15 Q And as I pointed out in your testimony, you
16 referred to Illinois Power's Rider GEA?

17 A Yes.

18 Q Do you have -- could you look at
19 Exhibit 27-B.5?

20 A I have that.

21 Q And Illinois Power in its Rider GEA defines
22 the term incremental costs, correct?

1 A Yes, they do.

2 Q And could you read the definition of
3 incremental costs as it appears on the first page of
4 Illinois Power's Rider GEA, Nicor Gas Exhibit 27-B.5?

5 A Incremental costs refer to all payments by
6 a utility to outside vendors in connection with
7 environmental activities associated with the
8 investigation and clean-up of former manufactured gas
9 plants.

10 Such costs also include but are not
11 limited to consultant and legal fees, land
12 acquisition costs, litigation expenses, costs or
13 expenses associated with judgments, orders or
14 decisions including settlements by a court, a
15 governmental agency or department or other
16 adjudicatory or quasi whatever, adjudicatory body
17 related to manufacturing gas operations slash sites.

18 Q All right. And if you could do down
19 further, there's the phrase environmental
20 activities --

21 A Yes.

22 Q -- in that Illinois Power Rider GEA?

1 Could you read the definition of
2 environmental activities as it's defined there in
3 Rider GEA, Nicor Exhibit 27-B.5?

4 A Environmental activities refer to the
5 investigation, sampling, monitoring, testing,
6 removal, disposal, storage, remediation of other
7 treatment of residues associated with manufactured
8 gas operations or with other operations that
9 generated substances subject to federal, state or
10 local environmental laws conducted at locations where
11 manufactured gas plants operated or the dismantling
12 of facilities utilized in manufactured gas
13 operations.

14 Q And in reference to the Nicor existing coal
15 tar rider or environmental rider and Illinois Power's
16 coal tar rider or Rider GEA, wouldn't you agree that
17 the terms incremental costs and environmental
18 activities are both used in the environmental riders
19 for both Nicor and Illinois Power?

20 A Incremental costs and environmental
21 activities are both used in both riders.

22 MR. FEELEY: Thank you. That's all the

1 questions I have. Mr. Reichart has some questions
2 for you.

3 CROSS-EXAMINATION

4 BY

5 MR. REICHART:

6 Q Good afternoon, Mr. Harms.

7 A Good afternoon.

8 Q Just have a few follow-up questions.

9 First I'd like to refer you to your
10 surrebuttal testimony, Page 10, lines 207 through
11 212?

12 A What line numbers?

13 Q 207 through 212.

14 Here you make reference to a statement
15 made by Staff Witness Luth in his rebuttal testimony.

16 A Yes.

17 Q Okay. And the question posed to yourself
18 is Mr. Luth states in his rebuttal testimony at Lines
19 174 through 176 that the number of connections on
20 smaller sized main results in less costs being
21 allocated to that class under the MDM study; is that
22 correct?

1 And you answer: No, as shown in my
2 example in rebuttal testimony, the allocation is
3 based on peak day flow of gas through the mains. The
4 number of customers connected is irrelevant.

5 Is that a correct characterization of
6 your testimony?

7 A That is correct.

8 Q Okay. I'd like to go to the example you
9 reference in your rebuttal testimony there, appearing
10 on Pages 7 and 8 of your rebuttal testimony.

11 Here you present --

12 MR. RATNASWAMY: Mr. Reichart, I hate to say
13 it, but he has two rebuttals. Which one is it?

14 MR. REICHART: I'm sorry. This is Nicor Gas
15 Exhibit No. 32.0, and we're looking at Pages 7 and 8.
16 BY MR. REICHART:

17 Q Here you present three tables, Tables 1, 2
18 and 3, and in these tables you show a simple example
19 of how customers attach to different sized mains
20 would be allocated distribution main costs; is that
21 correct?

22 A Yes.

1 Q Okay. And if I can refer you to Table 1,
2 under Customer B, in your example Customer B is
3 attached to a four-inch main; is that correct?

4 A Correct.

5 Q Okay. And Customer B has a peak day demand
6 of 200 units; is that correct?

7 A Correct.

8 Q And as a result of this information in
9 Table 1, if we look at Table 2, under Customer B, we
10 see that Customer B will be allocated two-thirds or
11 67 percent of the four-inch main costs.

12 Is that a correct reading?

13 A Correct.

14 Q Now, Customer B is also allocated a portion
15 of the eight-inch main costs as shown in tables two
16 and three; is that correct?

17 A Correct.

18 Q And the reason Customer B is allocated an
19 eight-inch main cost is because the gas that's
20 distributed through Customer B's four-inch main
21 connection must first flow through the eight-inch
22 main?

1 A Correct.

2 Q Similarly, Customer B is not allocated any
3 two-inch main costs because gas distributed through
4 Customer B's four-inch main does not have to flow
5 through the two-inch main?

6 A Correct.

7 Q Mr. Harms, I'd like to make a slight change
8 to the example you provided here and ask you some
9 questions about the allocation of main costs on this
10 revised example.

11 With everything else remaining
12 constant in your example, let's suppose that
13 Customer B was attached only to an eight-inch main
14 but has the same peak day demand of 200 units.

15 Under that scenario, would there be an
16 allocation to Customer B for four-inch main costs?

17 A No.

18 Q And as a result Customer B's attachment --
19 as a result of Customer B's attachment to a four-inch
20 main -- eight-inch main, I apologize, rather than a
21 four-inch main, Customer A would now be allocated 100
22 percent of two-inch and four-inch distribution main

1 costs that are shown in Table 2; is that correct?

2 A All other things equal, yes.

3 Q And the reason that Customer A would be
4 allocated 100 percent of the four-inch main costs if
5 Customer B was attached only to the eight-inch main
6 is because in this revision Customer A would be the
7 only customer using four-inch main; is that correct?

8 A Yes.

9 Q And in this revised example with peak day
10 demand among the three customers, A, B, and C,
11 remaining at a total of 600 units, Customer A would
12 be allocated the same 17 percent of eight-inch main
13 costs; is that correct --

14 A Correct.

15 Q -- in table two?

16 Now, Mr. Harms, earlier this morning
17 during the cross conducted by Mr. Robertson, he asked
18 you if new customers caused Nicor to incur new costs,
19 and you answered yes.

20 Do you recall that exchange?

21 A Generally.

22 Q Okay. Could you define your understanding

1 of new customers as was used in that question and
2 your response?

3 A New customers, as I understood in his
4 question, referred to customers that were attaching
5 to the system for the first time that required a new
6 service.

7 Q Okay. And would they be attaching to
8 existing mains that had been in use prior to the new
9 customers joining the system or would new
10 infrastructure have to be built out to reach these
11 customers?

12 A It could be either.

13 Q What new costs do new customers cause Nicor
14 to incur?

15 A New customers certainly cause us to incur
16 service pipe, meter regulator, certainly cause us to
17 incur costs associated with billing, meter reading,
18 those types of things.

19 Additional distribution main may be
20 required to reach the new customers. Generally
21 whatever comes along with new customers that you have
22 to be ready to provide their service on a peak day.

1 Q And would the new mains and new meters be
2 included in the rate base for Nicor's next rate case?

3 A I can't answer that.

4 Q Why can't you answer that?

5 A I don't know what's included in the next
6 rate case.

7 Q Are new -- new mains and meters that have
8 been -- costs for new mains and meters that have been
9 incurred since Nicor's last rate case were they
10 included in this -- in the rate base for this rate
11 case?

12 A The company has proposed to include all of
13 its investment costs, yes.

14 Q Okay. Let me ask my prior question a
15 little differently.

16 Do you believe that Nicor would
17 propose to recover the costs of the new mains and new
18 meters in its next rate case?

19 A It would propose to recover its rate base
20 at that time.

21 Q Okay. Would new customers added after the
22 final order in this docket be included in customer

1 counts for this docket?

2 A Could you ask that question again?

3 Q Would new customers added after the final
4 order in this docket be included in the customer
5 count for this docket?

6 A Some may be.

7 Q Under what circumstances would they be
8 included?

9 A Well, I think this docket ends in October.
10 We have three more months of the year that would be
11 included in the test year.

12 And also to the extent that our
13 estimates may be different from what is actually
14 attached, those customers would also be included.

15 Q Would new customers bring revenues through
16 rates established in this docket to the company?

17 A If they are served under one of the
18 tariffs, yes.

19 Q Mr. Harms, are you recommending that new
20 customers pay for the full amount of new installation
21 costs before obtaining services from Nicor?

22 A I'm sorry, I don't understand the question.

1 Q You're not proposing, are you, that
2 customers pay the full amount of new installation
3 costs before receiving service, are you?

4 A Can you tell me what you mean by full
5 installation costs?

6 Q The costs of whatever new infrastructure
7 would have to be put into the ground to connect new
8 customers to the Nicor system?

9 A We are not asking for payment of that, no.

10 MR. REICHART: Thank you. That's all I have.

11 JUDGE BRODSKY: Any redirect?

12 MR. RATNASWAMY: May I have a moment, your
13 Honor.

14 JUDGE BRODSKY: Of course.

15 REDIRECT EXAMINATION

16 BY

17 MR. RATNASWAMY:

18 Q Briefly, your Honor.

19 Mr. Harms, when you were being
20 cross-examined by the counsel for -- from the
21 Attorney General's Office, you were asked some
22 questions relating to decreased sendout or thruput

1 due to conservation.

2 Do you recall that?

3 A Yes, I do.

4 Q Is conservation the only reason that
5 sendout might decrease?

6 A No. There's a number of other reasons that
7 sendout might decrease such as business conditions,
8 businesses closing, moving out of the area.

9 Q To what extent -- withdraw.

10 Was the list that you just -- the
11 examples you just gave us intended to be exhaustive?

12 A No.

13 Q Mr. Harms, could you direct your attention
14 to Exhibit 17.7, please.

15 A I have that.

16 Q You recall being asked some questions
17 earlier about this exhibit?

18 A Yes.

19 Q Mr. Harms, Lines 1 through 13, a caption
20 called base rate comparison; is that correct?

21 A Correct.

22 Q And Lines 14 through 28 have a caption

1 called base rates gas supply costs environmental --
2 and environmental costs recovery charges; is that
3 correct?

4 A That is correct.

5 Q Now, I understand that the Lines 1 through
6 13 appear on this piece of paper on top of Lines 14
7 through 28, but would it be correct that if I put
8 them next to each other, that if you read them
9 across, that the figures running from the columns on
10 the left to the right would be summed up to come to
11 the total costs before taxes that you see in Lines 14
12 through 28?

13 A Yes. The total costs before taxes would be
14 the sum of the base rate revenue and the gas supply
15 cost and the environmental cost recovery.

16 Q Would it be correct that those two groups,
17 Lines 1 through 13 and 14 through 28, if you put them
18 next to Lines 29 through 44 and read across that
19 again, when you added up the applicable columns you
20 come up with the total costs with taxes?

21 A That is correct.

22 Q Okay. So recognizing that we're dealing

1 with an eight and a half by 11 inch piece of paper,
2 would it be right that if you wanted to read all the
3 way across, although it's not physically possible on
4 this piece of paper, you could put all those lines
5 next to each other as I have described?

6 A Yes.

7 Q So in the columns 14 -- I'm sorry, Lines 14
8 through 28, where it refers to percent differences,
9 do you see that?

10 Percent difference, excuse me.

11 A Yes.

12 Q That's the percent difference when you put
13 Lines 1 through 13 along with Lines 14 through 28,
14 right?

15 A Yes. That's the total cost before taxes.

16 Q Okay. Is the same true of the percent
17 difference in Lines 29 through 44?

18 A That is correct.

19 MR. RATNASWAMY: Your Honor, the last thing I
20 would do would be to move in the exhibit that was
21 presented by Mr. Moore but not moved into evidence,
22 which is the company's response to DRA Data Request

1 4.12.

2 JUDGE BRODSKY: Are you moving it as your own?

3 MR. RATNASWAMY: Yes, sir. And are we on 45?

4 MR. RIPPPIE: 46.

5 MR. RATNASWAMY: So that would be Nicor Gas
6 Exhibit 46.

7 JUDGE BRODSKY: Any objection?

8 MR. MOORE: No, I was going to move it in, but
9 that's fine.

10 JUDGE BRODSKY: Hearing no others, Nicor 46 is
11 admitted.

12 (Whereupon, Nicor
13 Exhibit No. 46 was marked
14 for identification.)
15 (Whereupon, Nicor
16 Exhibit No. 46 was admitted
17 into evidence.)

18 MR. RATNASWAMY: No further questions.

19 JUDGE BRODSKY: Is there recross?

20 MS. BUGEL: Your Honor, we don't have recross,
21 but we do have an on-the-record data request.

22 Our last question to Mr. Harms was on

1 average how far off is the company's Rider 6 estimate
2 from actual gas supply costs in cents per therm, and
3 he was -- his answer was that he didn't know.

4 And we have an on-the-record data
5 request for the company to answer that.

6 JUDGE BRODSKY: Okay.

7 MR. RIPPPIE: Your Honors -- let me try that
8 again.

9 As we have indicated before, we'll
10 respond to these in accordance with the rules.

11 Some of these are relatively
12 straightforward, on-the-record data requests. And we
13 anticipate being able to respond within the period of
14 time that the record is likely to remain open.

15 We don't want to deceive anybody
16 though and we want to be clear that some of these
17 on-the-record data requests would require significant
18 amount of work and are not going to be completed
19 during the period of time prior to the end of this
20 hearing unless there is some sort of an arrangement
21 or agreement reached where your Honor orders
22 otherwise.

1 This one in particular, I suspect,
2 will require a significant amount of study and it's
3 just not like that this is going to be done by
4 Friday.

5 MS. BUGEL: Your Honor, we'd be happy to work
6 with the company to negotiate the scope of this more
7 narrowly.

8 I don't think it needs to be done on
9 the record right now.

10 MR. RIPPIE: We're happy to have that
11 discussion.

12 JUDGE BRODSKY: That's fine.

13 MR. GARG: Attorney General's Office has some
14 recross.

15 JUDGE BRODSKY: Can you take a microphone,
16 please?

17 MR. GARG: I would like to submit for the
18 purposes of our recross AG Cross Exhibit 11.

19 It is Schedule G5 and it's entitled
20 the Company Schedule G5.

21

22

1 (Whereupon, AG
2 Exhibit No. 11 was marked
3 for identification.)
4 RECROSS-EXAMINATION
5 BY
6 MR. GARG:
7 Q Mr. Harms, do you have before you Schedule
8 G5?
9 A Yes, I do.
10 Q Do you see in the first paragraph the
11 second line -- the second sentence which states the
12 forecasted financial statements contained herein
13 present to the best of management's knowledge and
14 belief at the time of this forecast was prepared the
15 company's expected financial position results of
16 operations and cash flows as of and for the years
17 ending December 31, 2005, assuming that current
18 tariff rates remain in effect?
19 A I see that.
20 Q Does it also state two lines later the
21 assumptions disclosed herein are those that
22 management beliefs are significant to the forecast?

1 A That's what it says.

2 Q Mr. Harms, is there as -- is there offered
3 in Schedule G5 an assumption that states that
4 business will be closing soon?

5 A At the top of Page 2 of 6 it says Nicor
6 Gas's large residential customer base provides a
7 relatively stable level of natural gas deliveries
8 during weak economic conditions.

9 The company's industrial and
10 commercial base is well diversified lessening the
11 impact of industry specific economic swings.

12 I believe there we are recognizing the
13 current economic conditions.

14 Q Further down on Page 2 where it says
15 customer additions, it's the first sentence -- does
16 it state customer additions report forecasted to be
17 34,200 in 2005?

18 A Yes.

19 MR. GARG: No further questions.

20 JUDGE BRODSKY: Any other recross?

21 Any re-redirect?

22 MR. RATNASWAMY: No, sir.

1 JUDGE BRODSKY: Thank you, Mr. Harms.

2 JUDGE ARIDAS: Ms. Parmesano, you want to raise
3 your right hand.

4 (Witness sworn.)

5 HETHIE S. PARMESANO,
6 having been called as a witness herein, after having
7 been first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY

11 MR. RATNASWAMY:

12 Q Please state your name.

13 A My name is Hethie S. Parmesano.

14 Q Please state your business address?

15 A 777 South Figueroa Street, Suite 1950, Los
16 Angeles, California 90017.

17 Q Who is your employer and in what capacity
18 are you employed?

19 A I'm a vice president of National Economic
20 Research Associates, Incorporated.

21 Q Did you prepare -- direct or have prepared
22 under your direction and supervision direct and

1 rebuttal testimony for submission to the Illinois
2 Commerce Commission in this proceeding?

3 A Yes, I did.

4 Q I direct your attention to Nicor Gas
5 Exhibit 13.0.

6 A Okay.

7 Q I'm sorry. Wrong one.

8 May I direct your attention to Nicor
9 Gas Exhibit 30.0.

10 A Yes.

11 Q If I were to ask you the questions which
12 appear in said exhibit, would you give the answers
13 that appear therein?

14 A Yes.

15 Q Now, if I could direct your attention to
16 Nicor Gas Exhibit 13.0 and its attachments 13.1 and
17 13.2.

18 A Okay.

19 Q And if I could direct your attention to
20 Page 27, is it correct that you have identified two
21 typographical errors on that page?

22 A Yes.

1 Q Could you please tell us what those errors
2 are.

3 A In the table on -- halfway down the page,
4 on the line for Rate 6, under the column -- let's
5 see, it's the one, two, three, four, five, six, the
6 tenth column of numbers, there appears to be the
7 number is 1.21 cents per therm. It should be 2.14
8 cents.

9 And in that same column on the line
10 for rate 76 and 81, the figure 0.89 cents should be
11 1.82 cents.

12 Q Thank you.

13 Subject to any corrections and updates
14 which may appear in your rebuttal testimony, erratas
15 previously filed on the e-docket system and the two
16 corrections which you have just indicated, if I were
17 to ask you the questions which appear in your direct
18 testimony, would you give the answers that appear
19 therein including the attachments thereto?

20 A Yes.

21 MR. RATNASWAMY: Your Honors, I move the
22 exhibit -- I move the admission of Nicor Gas Exhibits

1 13.0, 13.1, 13.2, and 30.0.

2 JUDGE ARIDAS: Are there any objections to
3 those exhibits being admitted into the record?

4 Hearing none, they are admitted.

5 (Whereupon, Nicor Exhibits
6 13.0, 13.1, 13.2, and 30.0
7 were admitted into evidence.)

8 JUDGE ARIDAS: Ms. Bugel, you want to proceed
9 with cross.

10 MS. BUGEL: Yes. Thank you.

11 CROSS-EXAMINATION

12 BY

13 MS. BUGEL:

14 Q Dr. Parmesano, let me direct you to your
15 testimony Nicor Exhibit 13, Page 7, Lines 184 to 186,
16 where you discuss the objective of regulatory
17 policies.

18 Do you have that in front of you?

19 A Yes, I do.

20 Q In particular, I would like to draw your
21 attention to the statement that regulatory policies
22 should insure that pricing of delivery is consistent

1 with the existing marginal cost market pricing of gas
2 supply.

3 Does that imply that there's a fairly
4 direct relationship between marginal cost of service
5 and marginal cost of supply?

6 MR. RATNASWAMY: Object to the ambiguity of the
7 question. In the context of this paragraph it is
8 unclear whether the reference to marginal cost of
9 service indicates the cost of gas service, the cost
10 of delivery service or both.

11 MS. BUGEL: We are talking about the cost of
12 delivery service.

13 THE WITNESS: So the question is is there a
14 direct correspondence between the marginal cost -- to
15 the cost of delivery service and the market pricing
16 of gas supply?

17 MS. BUGEL: That's the question.

18 THE WITNESS: I guess I'm not sure what kind of
19 link you're talking about.

20 MS. BUGEL: I'm just asking if there's a
21 correlation.

22 THE WITNESS: Correlation in the sense that

1 they both move in the same direction.

2 MS. BUGEL: That's correct.

3 THE WITNESS: Not necessarily.

4 BY MS. BUGEL:

5 Q Is it correct that the marginal cost of
6 supply is higher in December through February than it
7 is in March through November?

8 A Marginal cost of supply?

9 Q Yes.

10 A Yes.

11 Q And this is a result of higher demand and
12 the need to supply more gas in December through
13 February?

14 A It's a result of the market forces which
15 set those supply costs, part of which is the fact
16 that demand is higher.

17 Q So your answer to my question is yes,
18 that's one reason?

19 A That's one reason.

20 Q And the marginal cost of service is also
21 higher in December through February than it is in
22 March through November, generally?

1 A The marginal cost of delivery, yes.

2 Q And the increased demand for gas is the
3 same thing that drives up the marginal cost for
4 service in those same months?

5 A It's the fact that the system is
6 designed -- or major parts of the system are designed
7 to meet those winter design day peaks.

8 Q So it's the increased demand for gas in the
9 winter, the design day peaks, that drive up the cost
10 of service in the winter months?

11 A Well, increased -- I mean it's just the
12 fact that the design day is in the winter.

13 It's the winter that the designers
14 focus on because that's when the peaks occur.

15 Q Okay. So would it be correct to say the
16 same pressures that drive up the marginal cost of
17 supply in the winter also drive up the marginal cost
18 of service, the increased demand, the peak days in
19 the winter months?

20 A Could you ask the question again?

21 Q Those peak days in the winter months, those
22 design day peaks that you just discussed that happen

1 to occur in the winter months because of the high
2 demand in the winter, it's that high demand that
3 drives up both supply -- the cost of supply and also
4 the marginal cost of delivery; it's the same thing
5 that's driving both those marginal costs of supply
6 and marginal cost of delivery up?

7 A Well, there are many factors which affect
8 the cost of supply. Demand being higher than it is
9 in some other months is one factor but you could have
10 supply costs falling because of other things that
11 have happened even though you're looking at a winter
12 month.

13 Q Okay. Did you -- am I correct in saying
14 that you just said that the marginal cost -- the
15 demand being higher in winter months is one factor
16 that drives up the marginal cost of supply in winter?

17 A That's -- I have said it several times
18 that's one of the factors.

19 Q Okay. And this higher demand in the winter
20 is also one factor as a result of design day peaks
21 that also drives up the marginal cost of service in
22 the winter?

1 A Yes.

2 Q Okay. So would reduced demand for gas in
3 those peak winter months be one factor that could
4 lead to lower marginal costs of supply?

5 A No.

6 Q Even though it is one factor that drives up
7 the marginal cost of supply in the winter, reduced
8 demand could not be a factor that would lead to
9 reduced -- lower marginal cost of supply?

10 A The marginal cost of delivery is higher in
11 the winter months because the system is designed for
12 that.

13 A marginal cost is a unit cost, a cost
14 per therm or cost per design day therm.

15 If the demand is lower, you still have
16 a unit marginal cost which could very well be the
17 same number. The marginal cost hasn't changed. It's
18 just applied, if you're calculating marginal cost
19 revenues, it's applied to a lower level of demand.

20 Q Okay. Do you agree that use of energy
21 efficiency measures would lead to reduced demand for
22 gas?

1 A I'm sorry, ask it again.

2 Q Do you agree that use of energy efficiency
3 measures would lead to reduced demand for gas?

4 A I guess it depends how you define energy
5 efficiency measure.

6 An effective one would tend to, yes.

7 Q Okay. I'd like to draw your attention to
8 your testimony, Nicor Exhibit 13, Page 8, Lines 200
9 to 207.

10 A Okay.

11 Q In your testimony -- I'm sorry, let's begin
12 at Line 204.

13 You state that to the extent that gas
14 delivery service is priced above marginal cost it
15 will discourage efficient use of gas resulting in
16 loss of benefits from higher gas use, e.g., a warmer
17 home, and encouraging consumers to shift to lower
18 priced but less economically efficient energy sources
19 and energy substitutes, e.g. insulation?

20 A Yes, that's what it says.

21 Q Okay. An energy -- is insulation an energy
22 efficiency measure?

1 A You're using the term. Maybe you should
2 define it.

3 Q I'm asking you how you would define it.

4 A I mean, I'm hesitating because there are
5 several ways to define efficiency.

6 One would be just in terms of reducing
7 the amount of consumption. Another would be reducing
8 consumption that's wasteful in terms of the value
9 being less than the marginal cost of that reduced
10 consumption.

11 So I'm not sure what you have in mind.

12 Q Okay. Do you define insulation or you do
13 give insulation as an example of an energy
14 substitute; is that correct?

15 A Yes.

16 Q Okay. Do energy substitutes lead to using
17 less gas?

18 A If a consumer substitutes for some gas
19 consumption something else, that's less gas that
20 otherwise would have been consumed.

21 MS. BUGEL: I have no further questions.

22 JUDGE ARIDAS: Is there any further cross? I

1 believe Ms. Bugel was the only one scheduled.

2 Did you have any questions?

3 JUDGE BRODSKY: No, I don't. Thank you.

4 JUDGE ARIDAS: Redirect?

5 MR. RATNASWAMY: No redirect, your Honors.

6 JUDGE ARIDAS: Ms. Parmesano, you're excused.

7 Thanks. I believe that concludes Nicor's witness
8 list.

9 Is that correct?

10 MR. RIPPPIE: That is correct, your Honor. I
11 believe that concludes the company's direct and in a
12 sense rebuttal and surrebuttal testimony subject, of
13 course, to unusual things happening in the case.

14 JUDGE ARIDAS: The next witness we had
15 scheduled was -- is it Dr. Kushler?

16 JUDGE BRODSKY: Yeah.

17 JUDGE ARIDAS: Are you prepared to --

18 MS. BUGEL: Yes, we are.

19 JUDGE ARIDAS: Okay.

20 JUDGE BRODSKY: Before we do that.

21 JUDGE ARIDAS: Since -- Ms. Bugel, since we
22 have an hour of cross scheduled for your witness, why

1 don't we take a -- Mr. Robertson.

2 MR. ROBERTSON: I have no cross for this
3 witness.

4 JUDGE ARIDAS: Okay. Why don't we take a
5 15-minute break.

6 MR. LEARNER: If I could enter an appearance.

7 Howard A. Learner appearing on behalf
8 Environmental Law and Policy Center.

9 Thank you very much.

10 JUDGE ARIDAS: Sure.

11 We'll come back at 3:00 o'clock.

12 (Whereupon, a brief recess
13 was taken.)

14 JUDGE ARIDAS: Let's go back on the record.

15 Mr. Rippie.

16 MR. RIPPIE: Your Honors, if you may recall
17 from earlier in the hearing, Nicor Gas had made an
18 offer of proof of portions of the testimony of
19 Ms. Karegianes. That would have been, I believe,
20 Nicor Gas Exhibit No. 28 which were stricken pursuant
21 to your Honors' orders.

22 I had a conversation with Mr. Fosco

1 from staff concerning the implications of that offer
2 of proof and I believe we have a common
3 understanding.

4 Therefore we'd like to offer pursuant
5 to Part 200, Section 600, as an offer of proof those
6 portions of Exhibit 28 which were stricken.

7 JUDGE BRODSKY: Is there anything from staff?

8 MR. REICHART: I just ask if we could respond
9 when Mr. Fosco returns. He should be down any
10 moment. If you wanted to wait or we can proceed with
11 this witness and Mr. Fosco could provide his
12 response.

13 JUDGE ARIDAS: Why don't we get back to that
14 after this witness.

15 Dr. Kushler, you want to raise your
16 right hand, please.

17 (Witness sworn.)

18 JUDGE ARIDAS: Ms. Bugel.

19

20

21

22

1 MARTIN KUSHLER,
2 having been called as a witness herein, after having
3 been first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY

7 MS. BUGEL:

8 Q Dr. Kushler, please state and spell your
9 name for the record.

10 A It's Martin Kushler, K-u-s-h-l-e-r.

11 Q And could you please identify your position
12 and employer?

13 A I'm director of the utilities program for
14 the American Council for Energy Efficient Economy.

15 Q Are you the same Martin G. Kushler who
16 prepared rebuttal testimony for this proceeding?

17 A Yes.

18 Q May I direct your attention to your
19 rebuttal testimony which has previously been
20 designated as ELPC Exhibit 2.

21 A Yes.

22 Q Is this true and accurate, to the best of

1 your knowledge?

2 A Yes, it is.

3 Q If I asked you the same questions today,
4 would you give the same answers?

5 A Yes, I would.

6 Q Dr. Kushler, did you prepare direct
7 testimony to this proceeding?

8 A Yes, I did.

9 Q May I direct your attention to your direct
10 testimony which has previously been designated as
11 ELPC Exhibit 1 with attachments.

12 A Yes.

13 Q Is this true and accurate to the best of
14 your knowledge?

15 A Yes, it is.

16 Q If I asked you the same questions today
17 would you give the same answers including the
18 attachments thereto subject to updates in your
19 rebuttal testimony?

20 A Yes.

21 MS. BUGEL: Your Honor, I move for the
22 admission of ELPC's Exhibits 1 and 2 subject to

1 cross.

2 JUDGE ARIDAS: There any objections to those
3 exhibits being admitted into the record?

4 MR. ZIBART: No, your Honor.

5 MS. BUGEL: Your Honor, that includes
6 Attachments 1.1, 1.2 and 1.3.

7 JUDGE ARIDAS: Hearing none, they are so
8 admitted.

9 (Whereupon, ELPC
10 Exhibits 1 and 2 were admitted
11 into evidence.)

12 JUDGE ARIDAS: Let's proceed with cross.

13 CROSS-EXAMINATION

14 BY

15 MR. ZIBART:

16 Q Good afternoon. I'm Christopher Zibart. I
17 represent Nicor Gas.

18 A Good afternoon.

19 Q Dr. Kushler, I was looking through your CV
20 and your materials and you published a lot of
21 articles and made comments before a number of
22 different bodies.

1 Am I right that this is the first time
2 you have been called upon to testify on energy
3 efficiency in a utility rate case?

4 A No.

5 Q And can you recall when the last time was
6 that you testified in a rate case?

7 A Well, I was on the staff of the Michigan
8 Public Service Commission for about ten years. I
9 left, I think, a little over five years ago, so it
10 would have been sometime prior to five years ago.

11 Q Dr. Kushler, would you agree that if energy
12 efficiency programs are going to be undertaken, they
13 should be cost effective?

14 A Yes.

15 Q And what you have proposed in your
16 testimony would cost ratepayers as much as \$38
17 million, and so you would want to know that there was
18 going to be a substantial amount of savings to go
19 with that, wouldn't you?

20 A Yes. The program should be designed such
21 that they would achieve good savings.

22 Q Right.

1 So it has to be done right; is that
2 right?

3 A We would like well done programs certainly.

4 Q In your testimony, you use a statistic of a
5 two-to-one ratio of benefit to cost in a
6 well-designed energy efficiency program.

7 Do you remember that?

8 A Could you give me a line number for that?

9 Q Sure. That would be in ELPC Exhibit 1
10 which is your direct testimony, Page 8, and I believe
11 it's at Lines 166 and 167.

12 A Yes. I have that.

13 Q Okay. And so I was saying you used that
14 statistic of the two-to-one ratio of benefit to cost
15 for a well-designed energy efficiency program.

16 Is that fair?

17 A I think a well-designed energy efficiency
18 program should exceed a benefit cost ratio of
19 one-to-zero. That means -- 1.0. That means that the
20 benefits exceed the costs.

21 My statement here is just observation
22 about typical programs that we looked at in our

1 study.

2 Q And the typical programs are two to one,
3 two dollars of benefit for every one dollar spent?

4 A Correct.

5 Q And I think in your example there it's, you
6 said, for every \$1 million spent on natural gas
7 energy efficiency programs, more than \$2 million
8 should be produced in avoided natural gas costs for
9 Nicor Gas's ratepayers; is that right?

10 A Yes. That's what it says.

11 Q And you say that if the benefits outweigh
12 the costs by two to one, that's certainly a cost
13 effective program, isn't it?

14 A Yes. That would be.

15 Q Would you agree that over the years some of
16 the programs that have been tried have turned out not
17 to be cost effective?

18 A Well, along the way, certainly.

19 The field's been active for at least
20 25 years and there's been a lot of learning over that
21 time period, certainly.

22 Q Now, if we achieve two dollars of benefit

1 to every one dollar of cost, that's a great result,
2 but there must be a point of diminishing returns,
3 isn't there?

4 A Can you explain what you mean by point of
5 diminishing returns?

6 Q If we spend two dollars we get -- if we
7 spend one dollar, we get two dollars of benefit.

8 If we spend, in your example, a
9 million dollars, we get two million of benefit.

10 But I take it at some point spending
11 even more and more and more is not going to maintain
12 that two-to-one ratio; is that fair?

13 A I think theoretically at some point you
14 could encounter that situation, but in my experience
15 in practical reality, that no state in the U.S. has
16 hit that point yet.

17 I actually just did a study looking at
18 that issue for Minnesota not too long ago.

19 Q Now, you are not from Illinois, sir, is
20 that -- am I right?

21 A Correct.

22 Q You're from Michigan?

1 A Yes.

2 Q I guess you're familiar enough with the
3 climate of Illinois to agree with me that Illinois,
4 like Michigan, is cold in the winter, right?

5 A Correct.

6 Q And the coldest day of the winter is likely
7 to be several degrees below zero; is that fair?

8 A Yes.

9 Q Would you agree that Nicor Gas's service
10 territory the peak season, and, in fact, the peak day
11 is going to be a very cold day?

12 A I would suspect that would be the case.

13 Q Okay. So when we're talking about natural
14 gas, one of the key energy efficiency programs or
15 techniques is going to be insulation for homes and
16 businesses, right?

17 A That would be one.

18 Q Another would be encouraging people to
19 purchase more efficient furnaces that happen to be
20 shopping for any new furnace, right?

21 A Right, uh-huh.

22 Q I want to talk for a moment about furnaces.

1 You'll have to indulge me for a
2 moment, if you would, because as my partners are
3 painfully aware, I can't stop talking about my own
4 new high-efficiency furnace.

5 I had to replace my furnace this past
6 November. And as matter of fact, I dutifully
7 consulted the ACEEE web site to find the most
8 efficient furnace I could.

9 Now, furnaces are rated using an
10 efficiency number, aren't they?

11 A Yes.

12 Q And that is what's reported on the ACEEE
13 web site, right?

14 A Yes.

15 Q And the statistic that's used there is the
16 AFUE statistic; is that right?

17 A Correct.

18 Q And the A in AFUE is annual, is it not?

19 A Uh-huh, yes.

20 Q So it's annual fuel utilization efficiency;
21 is that the statistic?

22 A Yes.

1 Q That looks at efficiency over the course of
2 the year, right?

3 A For the design year for that appliance,
4 yeah.

5 Q All right. And that's certainly what I
6 care about as a consumer. I want my annual
7 expenditure on gas to be as low as possible, right?

8 A Sure.

9 Q I don't necessarily care how much gas I use
10 in any one day as long as my gas bill overall is
11 lower; is that fair?

12 A I think the typical consumer, that would be
13 their perception.

14 Q Okay. And one of the ways that my new
15 furnace which has a rating, I might add, of 96.6, is
16 so efficient is that it has a two-stage burner.

17 You familiar with that?

18 A Yes.

19 Q That doesn't just turn on and off like
20 Mr. Rippie's furnace does. It can burn on low or --
21 when it's not as cold out, or it can burn on high
22 when it's a really nasty winter morning in Chicago?

1 A Correct.

2 Q And, of course, like almost everyone else
3 these days, I have got one of those thermostats with
4 the clock on it.

5 You're familiar with those?

6 A Yes.

7 Q The furnace doesn't run so much at night
8 but it comes on in the morning, right?

9 A Correct.

10 Q Okay. Now, on the coldest morning of the
11 year when everybody in Chicago wakes up, everybody's
12 furnace is on and my two-stage furnace would be on
13 full blast like everyone else's, right?

14 A Depending on how well you insulated your
15 home.

16 Q Okay. Well, let's turn to next winter's
17 capital project at the Zibart household and that is
18 insulation.

19 The typical insulation that people buy
20 for their houses is those big rolls of fiberglass
21 insulation, right?

22 A That's one method.

1 Q Okay. It's a common method, is it not?

2 A Yes.

3 Q And that stuff comes with an R number; is

4 that right?

5 A Right.

6 Q And that's supposed to tell you how much

7 insulation you get from the roll, right?

8 A It's the insulating value of the product

9 that's in that roll.

10 Q Okay. And one of the things that I was

11 dismayed to find out was that at very cold

12 temperatures the insulating capabilities of

13 fiberglass insulation is significantly decreased.

14 Are you aware of that?

15 A No. I'm not aware of that.

16 Q I want to talk again about --

17 MR. LEARNER: If we could just have a little

18 pause here.

19 Let's talk about what the witness

20 knows, not Mr. Zibart's view of what the properties

21 are of fiberglass.

22 If you want to ask him what he thinks

1 the properties are, that's fine. We don't need
2 testimony on what the attorney thinks it might be.
3 Okay.

4 BY MR. ZIBART:

5 Q I want to talk about the two-to-one ratio
6 again that we talked about.

7 That cost benefit ratio, we're talking
8 about on a statewide or service territory-wide basis;
9 is that right.

10 A Benefit cost ratio of two to one could be
11 applied to the whole portfolio of programs. Could be
12 applied to an individual program.

13 Depends on the context that it's being
14 used.

15 Q Okay. In your testimony I think you were
16 talking about spending a million dollars and getting
17 two million dollars of benefit.

18 So we weren't talking about an
19 individual there, were we?

20 A It could be an individual program or a
21 portfolio of programs.

22 Q Does that scale down to the individual

1 person so that if I spend a thousand dollars on gas
2 efficiency projects at my house that I'll get two
3 thousand dollars of benefit?

4 A That can vary considerably depending on
5 what the circumstances around a particular building
6 are, what the preexisting conditions are, what the
7 usage patterns in that home are.

8 That varies widely.

9 Q Okay. And one of the problems in figuring
10 that out is that the people incur the costs typically
11 all at once.

12 Like if someone buys a furnace, they
13 incur that cost all at once but they don't get the
14 benefit all at once; is that right?

15 A An energy efficiency product will save
16 energy over the useful lifetime of that product.

17 Q Right. So you don't -- you get benefit
18 over a period of time but you don't get all of the
19 benefit the same year you spend the money; is that
20 right?

21 A No.

22 Q That's not right or -- I'm sorry?

1 A That is a -- it's correct that typically
2 you wouldn't receive all the benefits in the first
3 year of operation which is one of the reasons why
4 it's very helpful to have energy efficiency programs
5 to help people be more familiar with the economic
6 paybacks from these products than they typically are.

7 Q Now, in your testimony you recommended a
8 collaborative process whereby key stakeholders would
9 meet and jointly agree to a portfolio of energy
10 efficiency programs to be funded; is that fair?

11 A Yes.

12 Q And you recommend that because you want
13 buy-in from the key stakeholders; is that right?

14 A Yes. It's a very common approach that's
15 been used to help bring along various stakeholders
16 who would have an interest in the program.

17 Q And who would the key stakeholders be in
18 working out a new set of energy efficiency programs
19 in the Nicor Gas service territory?

20 A Well, by generic categories it would be the
21 customer -- customers who are in the classes that are
22 going to be served, your trade allies which typically

1 refers to who are the participating professionals
2 that would participate in your program, maybe
3 vendors, suppliers, contractors.

4 It would be useful to get some input
5 from the folks who will have to participate with and
6 engage themselves with the program so that their
7 input can be reflected in the design of those
8 programs.

9 Q What about the utility?

10 A Well, certainly that's -- my understanding
11 was utility would host the collaborative process.

12 Q With respect to the new energy efficiency
13 programs in the Nicor Gas service territory that you
14 propose here, would you say that there's already a
15 consensus of the key stakeholders on how to proceed?

16 A Very unlikely.

17 My understanding it's been quite a
18 while since there have been any programs and it would
19 probably be very fruitful to engage in some
20 discussion with the entities that would -- you'd like
21 to have participate and take advantage of the
22 programs.

1 Q There's no consensus because they haven't
2 really even like met and started to discuss it yet;
3 is that fair?

4 A Exactly.

5 Q And so at this point there isn't really a
6 clearly stated purpose for the programs at this
7 point?

8 A Well, the clearly stated purpose for the
9 program is to save energy at a cost that's much less
10 than the cost of buying additional energy.

11 Q Would you agree that to ensure the success
12 of an energy efficiency program's administrative
13 structure that the three key elements are clarity of
14 stated purpose, consistency of policy over time and
15 consensus of key stakeholders?

16 A Those sound like reasonable elements. I
17 wouldn't want to confine myself to only three
18 elements or only those three elements.

19 Q But you think consensus of key stakeholders
20 is a key element?

21 A Well, I think it's often difficult in this
22 world to arrive at complete consensus, but I think to

1 the extent that you can bring parties along and
2 achieve consensus on important elements, I think that
3 can be very helpful.

4 Q Dr. Kushler, I'd like to show you, perhaps
5 you have it in front of you, a document that's been
6 marked ELPC Exhibit 6, I think.

7 A Okay. I have that.

8 Q And that is the comments of various parties
9 in California. And you have seen that document
10 before, have you not?

11 A Yes, I am familiar with this.

12 Q And would you take a quick look on Page 29.
13 Looks like it's about the fourth or fifth line down.
14 The sentence that starts out there we agree with the
15 regulatory assistance project that there are three
16 key elements to ensure the sustainability and success
17 of our proposed administrative structure over time:
18 Clarity of stated purpose, consistency of policy over
19 time and consensus of key stakeholders.

20 You see that?

21 A Yes, I do.

22 Q Now, your name is on the second page of

1 this document; is that right?

2 A Yes, it is.

3 Q And but you didn't actually write this; is
4 that fair?

5 A My role was to review drafts and provide
6 comments. I was not a prime author of this, no.

7 Q But you lent your name to it or signed onto
8 it because you agree with the general approach you
9 took; is that fair?

10 A Yes. I think as in most situations where
11 the 40 plus position paper from a number of parties
12 are likely small elements here or there that might
13 not be my favorite approach but in general, I thought
14 it was a good statement and I was willing to sign
15 onto that.

16 Q Right. You state in your testimony -- this
17 is in your direct testimony on Page 9 -- that the
18 energy efficiency program spending should be
19 allocated among customer sectors roughly in
20 proportion to the share of funding that comes from
21 each sector.

22 Do you remember that?

1 A Yes.

2 Q Now, what if you found that the real bang
3 for the buck was in industrial efficiency programs.

4 Wouldn't it be more cost effective to
5 spend the money where you can buy more energy
6 savings?

7 A You have identified really a very classic
8 dilemma that virtually every state faces when they
9 institute and design energy efficiency program.

10 It is correct that there tends to be a
11 trade-off. Industrial sector programs tend to be the
12 most cost effective. However, I'm not aware of any
13 jurisdiction in the U.S. that has decided they would
14 therefore only pursue that sector programs.

15 It is by far the -- in fact, I can't
16 think of any example where a state has not taken in
17 consideration the equity issue of having sectors that
18 help fund programs be eligible to receive programs.

19 Q Your study shows that the cost of energy
20 efficiency is much cheaper in the industrial sector
21 than it is in the residential sector; isn't that
22 true?

1 A Yeah. That would be a fair assessment of
2 the trends of results over time.

3 MR. ZIBART: I have no further for Dr. Kushler.

4 Thank you.

5 JUDGE BRODSKY: Any other cross?

6 Redirect?

7 MS. BUGEL: Can we have one moment, your Honor.

8 (Whereupon, a discussion
9 was had off the record.)

10 MS. BUGEL: Your Honors, I have just a couple
11 of quick questions.

12 REDIRECT EXAMINATION

13 BY

14 MS. BUGEL:

15 Q Dr. Kushler, they asked you a series of
16 questions regarding cost effectiveness and how this
17 translates to funding the program.

18 What methodology did you use to
19 develop your recommendation as to the funding level?

20 A Well, in general I think about the context
21 for funding levels for an initiative such as this
22 with Nicor based on what we observe from experience

1 in other utilities around the country and in terms of
2 commensurate levels of effort.

3 There are probably half a dozen
4 different approaches that you could use to develop
5 funding, but I think they would all tend to result in
6 funding level estimates roughly in the range of what
7 I identified in my direct testimony.

8 It so happened by convenience that I
9 think it was ELPC 1.2, that report provided a
10 convenient set of tables whereby we could easily
11 allocate a funding level to Nicor so we went ahead
12 and did that. That's where the 38 million funding
13 estimate comes from.

14 But you could easily use a number of
15 other methodologies to arrive at a -- what could be
16 regarded as a reasonable level of funding for that
17 company.

18 Q The funding level, the 38 point million
19 that you just mentioned per -- how does that compare
20 per customer to recent gas costs increases?

21 MR. ZIBART: Your Honor, I'll object. I don't
22 think that's proper redirect. That's beyond the

1 scope of the cross.

2 JUDGE ARIDAS: We're going to overrule it.

3 You did ask about funding, so. . .

4 THE WITNESS: I think the -- I deliberately
5 designed a funding level that I thought was -- would
6 not create a burdensome impact on customers,
7 particularly relative to the burden that they have
8 already seen in terms of higher gas costs.

9 For example, if you look at the
10 current gas factor of May 2005 for Nicor, I believe
11 it's 78 cents a therm.

12 In January of 2000, the start of this
13 decade, it was like 33.5 cents a therm. So they have
14 already seen a 133 percent increase in their cost of
15 gas, 133 percent.

16 As explained in my testimony what
17 we're suggesting, to provide an option for customers
18 to help be more efficient and lower their bills, the
19 cost of that would be less than 1 percent.

20 In terms of dollars, I estimate, I
21 think, ten dollars, about ten dollars a year for an
22 average residential customer. Applying those same

1 gas factors to the average consumption of gas to
2 customers on the company's system, they have seen
3 their gas bills go up \$560 just for the gas costs
4 since January of 2000.

5 So again, a ten dollar a year cost to
6 fund some programs that might give them relief as
7 opposed to \$560 a year they have already seen.

8 MS. BUGEL: We have no further questions.

9 JUDGE ARIDAS: I just have one follow-up on
10 your question.

11 EXAMINATION

12 BY

13 JUDGE ARIDAS:

14 Q Dr. Kushler, your 10 million or \$38 million
15 range that you recommend to the Commission, I'm just
16 curious as to why 10 is the baseline?

17 Is that based on the same study you
18 just mentioned, the ELPC study? Why 10? That seems
19 like a large spread.

20 A Well, I wanted to be able to offer a level
21 of funding that was large enough to at least provide
22 some meaningful pilot programs and get some services

1 going within the system.

2 And so \$10 million, quite frankly, is
3 kind of a round number estimate that would be sizable
4 enough that you could fund some good pilot programs
5 but still not approach, you know, the level of cost
6 effective implementation that I think certainly could
7 be implemented if Nicor implemented programs at the
8 level of the, you know, the best performing utilities
9 around the country.

10 Q So theoretically if the Commission were
11 inclined to impose, let's say for the sake of
12 argument, 2 million, would that be even worth the
13 effort in your opinion?

14 A Well, it would be -- it would probably
15 heighten the importance of having some very carefully
16 done design of how that money would be allocated to
17 programs.

18 I mean I would strongly urge that
19 significantly more than 2 million be allocated simply
20 because the magnitude of the cost problem that
21 customers face, even \$10 million is only two cents an
22 MCF for the average residential customer.

1 I mean it's -- it's almost -- it's not
2 even a rounding error for what they have seen in
3 terms of what's happened to their gas costs in the
4 last several years.

5 So, you know, it's always up to the
6 Commission what they might like to do; but I would
7 strongly urge that 10 million be kind of seen as a
8 good starting point to implement some good pilot
9 programs.

10 JUDGE ARIDAS: Okay.

11 Any redirect on that?

12 MS. BUGEL: No, thank you.

13 JUDGE ARIDAS: Dr. Kushler, you're excused.

14 JUDGE BRODSKY: Wait. Was there further
15 recross?

16 MR. ZIBART: No, your Honor.

17 JUDGE BRODSKY: Okay.

18 MR. LEARNER: Thank you very much.

19 JUDGE ARIDAS: I think we're going to turn to
20 staff.

21 Are you ready to proceed?

22 MR. FOSCO: Yes, your Honor.

1 JUDGE ARIDAS: Do we want to take care of the
2 offer of proof situation?

3 MR. RIPPIE: Yes, Mr. -- as I said Mr. Fosco
4 and I have had a discussion about the offer of proof
5 and we share the understanding the purpose of the
6 offer of proof is to preserve the issue of the
7 evidentiary ruling for consideration both before the
8 Commission and anywhere else the case may go.

9 And no one's offer of proof has a
10 purpose of permitting them to substantively cite in
11 further briefs before the Commission the matters
12 which have been stricken.

13 MR. FOSCO: Your Honor, he's correct, with that
14 understanding we have no objection to the offer of
15 proof.

16 JUDGE BRODSKY: Okay.

17 JUDGE ARIDAS: Who's the first staff witness?

18 MR. FOSCO: Your Honors, staff would call
19 Mr. Gene Beyer.

20 JUDGE ARIDAS: Mr. Beyer.

21

22

1 (Witness sworn.)

2 GENE BEYER,

3 having been called as a witness herein, after having
4 been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY

8 MR. FOSCO:

9 Q Mr. Beyer, would you please state your name
10 for the record and spell your last name?

11 A Gene Beyer, B-e-y-e-r.

12 Q Mr. Beyer, can you please state your
13 current position and place of employment?

14 A My title is bureau chief of the public
15 utilities bureau at the Illinois Commerce Commission.

16 Q Mr. Beyer, did you cause testimony to be
17 prepared and submitted in this docket?

18 A Yes.

19 Q Do you have in front of you, Mr. Beyer,
20 what has been marked as ICC Staff Exhibit 9.0?

21 A Yes.

22 Q And is that a copy of the direct testimony

1 that you caused to be prepared in this proceeding?

2 A Yes.

3 Q And does that consist of a cover page and
4 eight pages of questions and answers?

5 A Yes.

6 Q If I were to ask you the questions set
7 forth in ICC Staff Exhibit 9.0 today, would your
8 answers be as set forth therein?

9 A Yes.

10 Q And is the information contained in ICC
11 Staff Exhibit 9.0 true and correct to the best of
12 your knowledge?

13 A Yes.

14 Q Mr. Beyer, did you also cause to be
15 prepared rebuttal testimony in this proceeding?

16 A Yes.

17 MR. FOSCO: Your Honor, I guess a housekeeping
18 matter on Mr. Beyer's rebuttal testimony.

19 Mr. Rippie and I discussed the fact
20 that part of Mr. Beyer's rebuttal testimony referred
21 to a portion of Ms. Karegianes's testimony that was
22 stricken by your Honor's ruling, and that is the

1 question beginning on Line 316 of Mr. Beyer's
2 rebuttal testimony.

3 And, your Honor, we -- pursuant to
4 your rulings, her testimony was stricken. We have no
5 objection to revising Mr. Beyer's testimony
6 accordingly.

7 I do have five copies of his testimony
8 with those lines stricken.

9 Would you -- and either I can submit
10 three copies to the court reporter and copies to
11 yourselves or we can file it on e-docket
12 subsequently. However you want to handle it.

13 JUDGE ARIDAS: You can submit them right now,
14 Mr. Fosco. That's fine.

15 BY MR. FOSCO:

16 Q Mr. Beyer, again referring to your rebuttal
17 testimony, you have that document in front of you?

18 A Yes, I do.

19 Q That document is identified as ICC Staff
20 Exhibit 18.0; is that correct?

21 A Yes.

22 Q And that consists of a cover page and 18

1 pages of questions and answers?

2 A Yes.

3 Q Was this document prepared by you or under
4 your direction and control?

5 A Yes.

6 Q And if I were to ask you the questions set
7 forth therein including the modification we just
8 discussed on the record striking Lines 316 through
9 329, would your answers today be as set forth herein?

10 A Yes.

11 MR. FOSCO: Your Honor, we would move for
12 admission into the record of ICC Staff Exhibits 9.0
13 and 18.0, the direct testimony that was filed on
14 e-docket, and we have submitted copies of his
15 rebuttal as revised.

16 JUDGE ARIDAS: Are there any objections to the
17 aforementioned exhibits being admitted into the
18 record?

19 MR. RIPPIE: No, your Honor.

20 MR. FOSCO: Mr. Beyer is available.

21 JUDGE ARIDAS: Hearing none, they are so
22 admitted and this precedes the cross.

1 (Whereupon, ICC Staff
2 Exhibit 9.0 and 18.0 were admitted
3 into evidence subject to
4 cross-examination.)

5 MR. RIPPIE: I think we're the only ones, so
6 I'll dig in.

7 CROSS-EXAMINATION

8 BY

9 MR. RIPPIE:

10 Q Good afternoon.

11 A Good afternoon.

12 Q Mr. Beyer, I understand that you are the
13 staff witness who is responsible for discussing the
14 staff's policy and position with respect to the
15 selection of a weather normalization period for Nicor
16 Gas in this proceeding; is that correct?

17 A Yes.

18 Q And I'm aware that you are not a lawyer and
19 I think cannot and don't intend to testify in legal
20 matters, but am I correct that your testimony does
21 relate staff's view of the history of Commission
22 decisions and policy in this area?

1 A I do refer to that, yes, the Commission's
2 long-standing practice.

3 Q Is one of the bases therefore of your
4 testimony your familiarity with Commission decisions
5 and policy making in cases such as this?

6 A Yes. I'm familiar with that generally in
7 cases over the years.

8 Q It is fair to say, though, you're not a
9 statistician or otherwise an expert in statistical
10 analyses; is that right?

11 A That's correct.

12 Q It probably goes without saying but you're
13 also not a climatologist, a meteorologist, or someone
14 who is otherwise expert in weather patterns or the
15 evolution of those patterns; is that correct?

16 A That's correct.

17 Q Are you familiar with other staff
18 testimonies filed in this proceeding?

19 A Yes.

20 Q Perhaps we can save some time if I ask you
21 whether it is true that no other staff witness is a
22 climatologist, meteorologist or otherwise expert in

1 weather patterns or the evolution of those patterns?

2 Is my statement correct that no other
3 staff witness is expert in those areas?

4 A That's correct.

5 Q Mr. Beyer, will you agree with me that this
6 docket was initiated by an order of the Commission
7 suspending a filing of tariff sheets made by Nicor
8 Gas in November of last year?

9 A Yes, the filing was in November. The
10 suspension came later, I believe.

11 Q Yes. You're correct.

12 And certainly I did not mean to
13 intimate otherwise.

14 Since that time there's been a
15 re-suspension order. Are you familiar with that?

16 A Yes, that's true.

17 Q Are you aware of any other order in which
18 the Commission added to or supplemented the scope of
19 this proceeding?

20 A No.

21 Q Would you agree then that in layman's terms
22 the purpose of this docket is to determine if the

1 rates and tariff sheets filed by Nicor Gas are just
2 and reasonable to the utility and its customers?

3 A I believe that will be an outcome of the
4 case. Yes.

5 Q That would be the principal outcome of the
6 case?

7 A To determine just and reasonable rates,
8 terms and conditions of your tariffs, yes.

9 Q Yes. Fair enough.

10 Now, are you familiar with what a
11 rulemaking docket is?

12 A Yes.

13 Q And would you agree with me again in
14 layman's terms that this is not a rulemaking docket?

15 A That's correct.

16 Q Are you also familiar with what a generic
17 proceeding is?

18 A I believe that can be defined in different
19 ways, but generally as I have used it, yes.

20 Q Just so we're all clear, why don't you give
21 me your general -- your generic definition of a
22 generic proceeding.

1 A What I intended to describe in my testimony
2 is a separate proceeding that can be begun initially
3 in an informal manner or formal manner.

4 The details were not described in my
5 testimony, but the proceeding that I would envision
6 in this case would be one in which staff would begin
7 a dialogue with the various parties that would be the
8 electric and gas utilities in Illinois as well as
9 other interested parties to discuss this weather
10 normalization and whether or not changes are
11 appropriate.

12 Q And this obviously is not a proceeding like
13 that; is that correct?

14 A That's correct.

15 Q Now, are you familiar in general with the
16 means by which utility's rates are, in general,
17 evaluated by the Commission in Illinois?

18 A Yes. There are several factors that go
19 into the determination of rates.

20 Q If at any point I ask you a question that
21 exceeds the level of your knowledge and experience,
22 you'll tell me, right?

1 A I certainly will.

2 Q Okay. Would you agree that as a matter of
3 policy, it's your understanding that utilities in
4 Illinois are entitled to a revenue requirement that
5 covers their reasonable and prudent costs including a
6 fair return on their investment?

7 A That's correct.

8 Q And would you agree that the Commission
9 should design rates and set charges so as to give
10 utilities a fair opportunity to recover that revenue
11 requirement?

12 A Yes.

13 Q Now, aside from any specific legal
14 requirement, is it your understanding that those two
15 characteristics, namely a just and reasonable revenue
16 requirement and rates that are designed to recover
17 that revenue requirement, are basic rights of
18 utilities that historically have been uniformly
19 recognized by the Commission?

20 A Well, I know that's what the Commission
21 strives for in issuing its order.

22 I don't recall considering that before

1 in terms of basic rights to the utilities, but I do
2 know that the Commission strives to be fair to the
3 utility and the ratepayers altogether.

4 Q Maybe I can ask it this way and it will be
5 a little more precise.

6 Are you aware, Mr. Beyer, of any
7 Commission rate decision in which the Commission
8 purposely awarded the utility rates under which it
9 would not be expected to recover its revenue
10 requirement?

11 A I can't think of any situation.

12 Q Do you agree that it would be wrong for the
13 Commission to do that?

14 A Yes.

15 Q Do you also agree that it would be wrong
16 for the Commission to reduce a utility's revenue
17 requirement or refuse to allow to effect tariffs that
18 are expected to recover that revenue requirement
19 based on evidence that is not part of the record in
20 the rate case docket?

21 MR. FOSCO: Could I seek clarification. The
22 question is intended from a policy perspective, not a

1 legal -- can we clarify that?

2 MR. RIPPIE: Yes. That's why I'm trying to use
3 the word wrong or poor policy rather than do you have
4 a legal opinion.

5 Mr. Beyer's testimony as you know
6 discusses policy and I'm trying to stay within that
7 sphere.

8 MR. FOSCO: Thank you for that clarification.

9 THE WITNESS: Would you repeat the question,
10 please?

11 MR. RIPPIE: I'll try.

12 BY MR. RIPPIE:

13 Q Would you agree that it would be wrong for
14 the Commission to reduce a utility's revenue
15 requirement or refuse to allow it to effect tariffs
16 that will permit it to recover a revenue requirement
17 based on evidence that's not part of the record in
18 the rate case?

19 A I would agree.

20 Q And as I did with my earlier question, let
21 me ask you, can you think of any case in the history
22 of the Commission where it has, in fact, reduced a

1 utility's revenue requirement or refused to allow it
2 rates designed to recover a revenue requirement based
3 on evidence that was not part of the record?

4 A No.

5 Q Do you agree that the question of what the
6 average coldest weather in northern Illinois over the
7 next ten years will be is a question of scientific
8 fact?

9 A Well, it's certainly maybe a question of
10 science and predictions. I don't know that it --
11 knowing what's going to happen in ten years is based
12 on scientific fact.

13 Q Let me try to ask it a little bit
14 differently and see if I could address your concerns.
15 Would you agree that identifying the
16 expected winter weather in northern Illinois over the
17 next ten years is a matter of scientific fact?

18 A I can say it's maybe a result of a process,
19 but I'm just having trouble with the word fact in
20 your question.

21 Q Would you agree that it is a matter that
22 the Commission should look to scientists and

1 statisticians to resolve?

2 MR. FOSCO: I'll object to the extent that
3 calls for a legal conclusion.

4 MR. RIPPIE: I'll rephrase because that is not
5 my intention, your Honors.

6 BY MR. RIPPIE:

7 Q Would you agree that if the Commission were
8 to ask itself the question what is weather likely to
9 be in the winter in northern Illinois over the next
10 ten years, the people that it ought to turn to to
11 answer that question are scientists and
12 statisticians?

13 A I'm certain that people of those
14 backgrounds could definitely produce those
15 predictions, but I don't know that those are the only
16 people that do.

17 I don't know that, for example,
18 utilities which address these issues on a daily basis
19 are constantly turning to scientists and
20 statisticians to provide those predictions.

21 Q If I were then to amend my question to
22 include scientists, statisticians and utility

1 engineers who have a day-to-day operating familiarity
2 with those conditions, would you agree with my
3 statement?

4 A Yes. If you added utility engineers or
5 utility experts in that field, yes.

6 Q Mr. Beyer, moving on to the next subject
7 area, would you agree that normalizing sales and
8 transportation volumes for weather is an appropriate
9 way for gas utilities to reflect weather variability?

10 A I'm not aware how they do that for the
11 transportation volumes.

12 Q Okay. You agree for sales volumes?

13 A Yes.

14 Q Would you agree that the Commission has
15 historically set rates to allow gas utilities to
16 recover their revenue requirement if weather develops
17 as expected in the rate case?

18 A Yes.

19 Q And would you agree that if weather does
20 not develop as expected in the rate case, that the
21 utility is likely not to recover its revenue
22 requirement?

1 A All other things held equal? Yes.

2 Q Fair enough.

3 Would you agree --

4 A May I amend that?

5 Q Certainly.

6 A You said if the weather doesn't work out as
7 normal the utility won't earn its revenue
8 requirement.

9 It could go the other way as well. If
10 it's much colder than normal, the utility will earn
11 more than was determined as its revenue requirement.

12 Q Yes. So let me phrase it then this way:

13 Would you agree that if the winter
14 weather used for setting gas rates is colder than
15 what is actually expected to occur, the utility can
16 be expected to sell less gas than assumed in setting
17 the rates?

18 MR. FOSCO: I think --

19 THE WITNESS: I think I --

20 MR. RIPPIE: Did I just say that backwards? I
21 flipped that. Got me confused now.

22

1 BY MR. RIPPIE:

2 Q Would you agree that if the winter
3 weather -- actually I think I said it right. Let me
4 say it again.

5 Do you agree that if the winter
6 weather used for setting the rates is colder than
7 what actually occurs, the utility can be expected to
8 sell and transport less gas than assumed in setting
9 the rates?

10 A Yes, that's correct. My apologies. I
11 misunderstood.

12 Q I probably read it wrong. We're clear now.

13 Is that why you said at Lines 119
14 through 121 of your direct testimony, Staff Exhibit
15 9.0, a therm sales forecast that is set -- quote, a
16 therm sales forecast that is set too high will
17 contribute to the company's inability to recover its
18 costs while a forecast that is set too low will
19 contribute to collecting too much from customers?

20 A Yes.

21 Q Now, in this case, do you recall what the
22 number of heating degree days Nicor witnesses

1 testified should be used to fairly represent expected
2 weather?

3 A Approximately 5800.

4 Q Just so the record is absolutely clear and
5 to help our understanding, can you tell us briefly
6 what a heating degree day is?

7 A Heating degree day is the measure of a
8 day's average high and low temperatures from -- as
9 they vary from 65 degrees.

10 Q And am I correct that both staff and Nicor
11 Gas witnesses have used heating degree days as the
12 measurement for winter weather for the purposes of
13 normalizing the rates and charges?

14 A That's correct.

15 Q Now, staff recommends in this case a higher
16 number of heating degree days; am I correct?

17 A Yes.

18 Q Approximately what number does staff
19 recommend, do you recall?

20 A Approximately 6,000.

21 Q Now, if the Commission were to adapt
22 staff's 6,000 HDD position and it turns out that

1 Nicor Gas's 5830 HDD prediction is closer to reality,
2 would you agree that, all other things being equal,
3 that will contribute to Nicor Gas's inability to
4 recover its costs?

5 A In any given year when the actual weather
6 is warmer than that used to separate, it will
7 contribute to the company's inability to recover its
8 costs.

9 Q At any point in this case, either in
10 testimony or in response to data requests, has staff
11 cited any scientific literature that suggests that a
12 30-year weather normalization period is presently
13 more accurate for northern Illinois than a 10-year
14 normalization period?

15 A No.

16 Q Will you agree with me, sir, that there is
17 no ICC rule or regulation or general order before the
18 general orders were codified that requires an
19 Illinois gas utility to use a 30-year period in
20 setting its rates?

21 A That's correct.

22 Q Would you also agree that there never has

1 been such a rule or general order to your knowledge?

2 A Not to my knowledge.

3 Q Would you also agree that there is no ICC
4 rule or general order prohibiting a utility from
5 proposing in an individual rate case any weather
6 normalization period that its evidence supports?

7 A I would agree the utility can do that.

8 Q Would you also agree that over the last 25
9 years the Commission has applied several different
10 weather normalization schemes to Nicor Gas itself?

11 A I don't know that. If you had a reference,
12 perhaps I could --

13 Q Sure.

14 A -- think about that.

15 Q There's nothing tricky here.

16 In 1979, for example, the Commission
17 ordered Nicor Gas to implement rates that had no
18 weather normalization period at all, for example.

19 Isn't that right?

20 A That's correct. In that case the
21 Commission denied the company's weather normalization
22 adjustment.

1 Q And in the '95 rate case there was a
2 30-year period used?

3 A That's correct.

4 Q When did the staff of the Illinois Commerce
5 Commission first become aware that scientific
6 evidence suggested that the use of a 30-year
7 historical weather period might not be likely to
8 accurately predict the weather that gas utilities
9 will experience in Illinois?

10 MR. FOSCO: Can I object to the form of the
11 question. I mean, scientific evidence, I don't know
12 that we have that defined.

13 If you -- I would suggest rephrasing
14 it --

15 MR. RIPPIE: I'll withdraw it. I'll come at it
16 a little bit --

17 (Whereupon, Nicor
18 Exhibit No. 47 was marked
19 for identification.)

20 BY MR. RIPPIE:

21 Q I have put in front of you, Mr. Beyer,
22 tendered to the Judges and other counsel, a document

1 entitled the appropriate use of climatic information
2 in Illinois, natural gas utility weather
3 normalization techniques by William E. Easterling,
4 James R. Angel and Scott A. Kirsch from the Illinois
5 State Water Survey, Champaign, in 1990.

6 Mr. Beyer, have you seen this document
7 before?

8 A No.

9 Q Do you know whether anyone on staff -- let
10 me try this a different way.

11 Do you know whether the staff of the
12 Illinois Commerce Commission had any input or
13 provided any data in connection with the development
14 of this report?

15 A No, I don't know.

16 Q Do you know when the Commission staff first
17 became aware that a Illinois state climatologist was
18 studying weather patterns and their impact on weather
19 normalization in Illinois?

20 A Speaking on behalf of myself?

21 I first became aware of this report as
22 it was referenced in Professor Takle's testimony.

1 Q So I take it you also do not know who
2 James R. Angel is except by reference in Dr. Takle's
3 testimony; is that right?

4 A That's correct.

5 Q Now, in this case, did Nicor Gas have
6 occasion to alert staff in advance of the filing that
7 it intended to use a 10-year weather normalization
8 period because it viewed that period as more likely
9 to produce accurate results?

10 A Yes, there was a meeting shortly before the
11 company filed in which you talked to us about this
12 adjustment or this issue.

13 Q Has staff, to your knowledge, at any time
14 since 1990 filed a report or otherwise petitioned the
15 Commission to institute a generic proceeding to study
16 what the appropriate weather normalization period is
17 for Illinois utilities?

18 A No, we did not.

19 Q Are you also aware of a recent filing by
20 Peoples Gas Company raising -- strike that, please.

21 Are you also aware of a recent filing
22 by Peoples Gas Company proposing an alternative means

1 of adjusting utility revenues for errors -- let me
2 try that one last time.

3 Are you also aware of a recent filing
4 by Peoples Gas proposing a means of adjusting
5 revenues on account of differences between actual and
6 forecast weather?

7 A Yes.

8 Q Do you know roughly when that filing was
9 made?

10 A Three weeks ago possibly, and I believe the
11 filing is a tariff that would adjust the rate charged
12 customers rather than one that is a direct
13 translation into revenues.

14 MR. RIPPIE: Fair enough.

15 Mr. Beyer, I believe that's all the
16 questions I have for you.

17 Thank you very much.

18 THE WITNESS: Thank you.

19 JUDGE ARIDAS: Mr. Beyer, I have also a
20 question.

21

22

1 EXAMINATION

2 BY

3 JUDGE ARIDAS:

4 Q In your rebuttal testimony here, you talk
5 about a weather adjustment tariff and you propose
6 that a weather adjustment tariff be utilized if there
7 would be adverse winter effects this coming winter on
8 the company and you cite -- it's on Page 18 of your
9 rebuttal.

10 The reason you give is that there's --
11 it's a timing issue. The Commission final order
12 wouldn't be entered so you advocate a weather
13 adjustment tariff and you state you recommend that
14 the company, staff and other parties not wait for a
15 Commission order but rather begin discussions now
16 regarding the development and implementation of a
17 weather adjustment tariff.

18 I was just wondering if those
19 discussions have begun or anything has been done on
20 that recommendation?

21 A No, we have not.

22 As I mentioned earlier, I would

1 envision a proceeding to start investigating those
2 issues could begin within the next couple weeks.

3 I would envision a series of questions
4 from staff that we would send out to the gas and
5 electric companies as well as other stakeholders that
6 have an interest in this, see what their responses
7 are, study that, follow up, perhaps a meeting of the
8 parties to discuss how we want to address these
9 issues.

10 In my direct testimony, I mention that
11 looking at alternatives such as that would be one of
12 the issues we'd want to discuss.

13 JUDGE ARIDAS: Okay. Thank you.

14 Any other cross for Mr. Beyer?

15 Redirect?

16 MR. FOSCO: No, your Honor.

17 JUDGE ARIDAS: Okay, Mr. Beyer, you're excused.

18 THE WITNESS: Thank you.

19 JUDGE ARIDAS: Why don't we take a 10-minute
20 break.

21 (Whereupon, a brief recess
22 was taken.)

1 JUDGE BRODSKY: Back on the record.

2 MS. SCARSELLA: Staff would like to call
3 Ms. Ebrey.

4 (Witness sworn.)

5 THERESA EBREY,
6 having been called as a witness herein, after having
7 been first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY

11 MS. SCARSELLA:

12 Q Ms. Ebrey, can you please state your full
13 name for the record.

14 A My name is Theresa Ebrey, E-b-r-e-y.

15 Q Who is your employer and what is your
16 business address?

17 A I'm employed as an accountant with the
18 Illinois Commerce Commission and my business address
19 is 527 East Capitol Avenue, Springfield, Illinois,
20 62701.

21 Q Did you prepare written exhibits for
22 submittal in this proceeding?

1 A Yes, I did.

2 Q Do you have before you a document which has
3 been marked for identification as ICC Staff Exhibit
4 2.0 which consists of one cover page, a table of
5 contents, 17 written pages and attached Schedules
6 2.01 through 2.09 and is entitled direct testimony of
7 Theresa Ebrey?

8 A Yes, I do.

9 Q Did you prepare that document for
10 presentation in this matter?

11 A Yes, I did.

12 MS. SCARSELLA: I would like to note for the
13 record at this time that this is the same document
14 that was filed via e-docket on March 1, 2005.

15 At the time, though, there were two
16 versions of Ms. Ebrey's testimony, one was
17 confidential and one was public.

18 Since that time the company has
19 notified staff that the entire document can be
20 treated as public. So the same document was filed
21 once again on May 18th, 2005, as public, so now
22 there's only one version.

1 BY MS. SCARSELLA:

2 Q Do you have any additions or corrections to
3 make to ICC Staff Exhibit 2.0?

4 A No, I don't.

5 Q Do you have before you a document which has
6 been marked for identification as ICC Staff
7 Exhibit 11.0 revised which consists of a cover page,
8 a table of contents, 14 typewritten pages, Attachment
9 A and Schedule 11.01 and is entitled the revised
10 rebuttal testimony of Theresa Ebrey?

11 A Yes, I do.

12 Q Did you prepare that document for
13 presentation in this matter?

14 A I did.

15 MS. SCARSELLA: I note for the record this is
16 the same document that was filed via e-docket on
17 May 13, 2005.

18 BY MS. SCARSELLA:

19 Q Do you have any additions or corrections to
20 make to ICC Staff Exhibit 11.0 revised?

21 A No, I do not.

22 Q Is the information contained in ICC Staff

1 Exhibits 2.0 and 11.0 revised true and correct to the
2 best of your knowledge?

3 A It is.

4 Q If I were to ask you the same questions set
5 forth in ICC Staff Exhibits 2.0 and 11.0 revised,
6 would your responses be the same today?

7 A Yes, they would.

8 MS. SCARSELLA: Your Honor, I move for
9 admission into evidence ICC Staff Exhibits 2.0 and
10 ICC Staff Exhibit 11.0 revised.

11 JUDGE BRODSKY: Any objections?

12 Hearing none, then those items are
13 admitted subject to cross-examination.

14 (Whereupon, ICC Staff
15 Exhibits 2.0 and 11.0 were admitted
16 into evidence subject to
17 cross-examination.)

18 JUDGE BRODSKY: Who wishes to proceed?

19 MR. KAMINSKI: Mark Kaminski for the people of
20 the State of Illinois.

21 JUDGE BRODSKY: Okay.

22 MR. KAMINSKI: First of all, I just want to

1 make clear all of the -- all of Exhibit 2.0 has been
2 declared public?

3 MS. SCARSELLA: Yes, it has.

4 MR. KAMINSKI: Thank you.

5 MS. SCARSELLA: It was refiled as such on
6 e-docket on May 18th.

7 CROSS-EXAMINATION

8 BY

9 MR. KAMINSKI:

10 Q Good afternoon, Ms. Ebrey.

11 A Good afternoon.

12 Q Could you please refer to Page 3 of your
13 rebuttal testimony, specifically Lines 56 to 58.

14 You state that you are withdrawing
15 your adjustment to budget payment balances, correct?

16 A What were those line numbers again?

17 Q That would be Lines 56 through 58.

18 A Is this my direct or rebuttal testimony?

19 I'm sorry.

20 Q It would be your rebuttal. I'm sorry, it
21 would be Exhibit 11.0.

22 MS. SCARSELLA: Are you working off her

1 revised? Maybe the line numbers have changed.

2 MR. KAMINSKI: I'm working off of the original
3 that was filed on e-docket.

4 BY MR. KAMINSKI:

5 Q There is a paragraph starting in addition I
6 am also withdrawing my adjustments, and I believe on
7 the third line of that paragraph, refer to budget
8 payment plan balances, correct?

9 MS. SCARSELLA: I think on her revised
10 testimony it's Line 60 where she addresses that.

11 THE WITNESS: I see that on Line 60 of my
12 Exhibit 11.0 revised.

13 BY MR. KAMINSKI:

14 Q You do state that you're withdrawing your
15 adjustment to the budget payment balances, correct?

16 A That's correct.

17 Q And on Page 4 -- just a moment. I'll get
18 these right.

19 Page 4, Lines 64 to 65, you stated
20 your reason for withdrawing your adjustments to
21 budget payment balances is in the interest of
22 narrowing the issues in this proceeding, correct?

1 A Correct.

2 Q The intervenors in this case continue to
3 propose adjustments to budget payment balances
4 similar to your proposed position in your direct
5 testimony, correct?

6 A Correct.

7 Q And the Commission is still going to have
8 to decide the issue of budget payment balances,
9 correct?

10 A That's correct.

11 Q Isn't it true that withdrawing your
12 adjustments to the budget payment balances did not
13 narrow the issues in this proceeding?

14 A I believe that there was slight difference
15 between my adjustment and the AG's adjustment, and by
16 withdrawing my adjustment, there would not have to be
17 a decision made on which methodology would be
18 correct.

19 Q Are you stating that you support the AG's
20 adjustment?

21 A As I stated in Line 62 of my testimony, I
22 do maintain that actual balances should be used

1 rather than the 21 months of projections that the
2 company used in their numbers.

3 If the Commission decides that an
4 adjustment is necessary, the AG's adjustment is a
5 reasonable alternative to the company's proposal.

6 MR. KAMINSKI: Okay. Thank you.

7 I also have the direct testimony as
8 originally filed. Have the line numbers also changed
9 for that?

10 MS. SCARSELLA: No, it has not.

11 MR. KAMINSKI: Okay. Good.

12 BY MR. KAMINSKI:

13 Q Could you refer to your direct testimony at
14 Page 9, Lines 159.

15 You discuss the proposed adjustment to
16 ADIT, A-D-I-T, related to the company's Section 263-A
17 election, correct?

18 A Correct.

19 Q Could you briefly explain what Nicor's
20 proposed adjustment to ADIT related to the company's
21 Section 263-A election is.

22 A On the company's Schedule G-7, there is a

1 footnote and I believe this is a public schedule, I
2 don't think -- it's not marked confidential --
3 there's a footnote that says a projected settlement
4 on September 30, 2005, of the Internal Revenue Code
5 Section 263-A accounting method issue currently under
6 review by the Internal Revenue Service included on
7 this schedule.

8 It's the company's estimate of what
9 the settlement will be after the Internal Revenue
10 completes its review of their election.

11 Q Would you agree that in 2002 the company
12 substantially increased the current tax deduction for
13 labor and overhead that was capitalized -- sorry.
14 Let me strike that.

15 Would you agree that in 2002 the
16 company substantially increased the current tax
17 deduction for labor and overhead that are capitalized
18 for financial reporting purposes?

19 A Subject to check.

20 Q And would you agree that the 2002 tax
21 deduction included a substantial catch-up component?

22 A Yes.

1 Q And the effect of this catch-up component
2 was that in 2002 the company received a refund of
3 taxes paid in prior years?

4 A I'm -- I don't know.

5 Q Would you be willing to accept that subject
6 to check?

7 A I'm not sure if I have the information that
8 I could check that, so no, I couldn't do that.

9 Q Until a new rate is put into effect as a
10 result of this rate case, the entire benefit of the
11 263-A refund has gone to and continues to go to Nicor
12 shareholders, correct?

13 A Could you repeat that question?

14 Q Until a new rate case -- I'm sorry, start
15 over.

16 Until a new rate is put into effect as
17 a result of this rate case, the entire benefit of the
18 263-A refund has gone to and continues to go to Nicor
19 shareholders, correct?

20 A I would say that's correct.

21 Q And prior to the new rate being put into
22 place, the benefit of 263-A refund has not gone to

1 ratepayers, correct?

2 A Correct. Until a new rate is in place,
3 there's -- I don't know that there would have been
4 any impact to the ratepayers.

5 Q Is it your understanding of the company's
6 position in this case that Nicor believes that it is
7 possible that the IRS might at some point challenge
8 some portion of the tax deductions related to the
9 Section 263-A election?

10 A That's my understanding.

11 Q One moment.

12 In its exhibits Nicor has reflected
13 its assertion that the IRS could require repayment of
14 income taxes of approximately 66 million, correct?

15 A That's correct.

16 Q And earlier you referred to Exhibit G-7.

17 Nicor's reflected that its assertion
18 that IRS could require repayment of the income taxes
19 of approximately 66 million is assumed to occur on
20 September 30th, 2005, correct?

21 A I believe that's the company's estimate of
22 when a decision will be made by the Internal Revenue

1 Service.

2 Q And you agree that September 30, 2005, is
3 only about four months from now, right?

4 A Right.

5 MR. KAMINSKI: Your Honor, at this time I have
6 a couple more questions, but they're dealing with a
7 couple confidential exhibits so could we at this time
8 go in camera?

9 JUDGE BRODSKY: These are exhibits not attached
10 to the testimony that was unsealed or unmarked
11 confidential?

12 MR. KAMINSKI: One has already been confirmed
13 as confidential. The other I do definitely believe
14 is still confidential and they are not attached to
15 her testimony.

16 JUDGE BRODSKY: Okay. Are these the last items
17 for the cross? For your cross?

18 MR. KAMINSKI: It's the last line of questions.
19 I'll be done shortly afterwards.

20 JUDGE BRODSKY: Okay. So what we'll do is go
21 into closed session then.

22 Is there -- anybody that's not party

1 to the confidentiality agreements that have been
2 previously set up in this docket should exit at this
3 point.

4 MR. KAMINSKI: Thank you.

5 JUDGE BRODSKY: Before we continue, am I
6 correct that this procedure is sufficient just as
7 though it was the last time?

8 MR. RIPPIE: Yes.

9 JUDGE BRODSKY: Thank you. Whenever you're
10 ready.

11 MR. KAMINSKI: Just waiting for them to be
12 handed out.

13 JUDGE BRODSKY: Whenever you're ready.

14 MR. KAMINSKI: Thank you.

15 (Whereupon, further proceedings
16 were had in camera.)

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